

**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 for  
the First Judicial Circuit in and  
for Escambia County, Florida,  
et al.

Defendants.

Case No.: 3:21-CV-671

**DEFENDANT’S MOTION FOR SUMMARY JUDGMENT AND  
INCORPORATED MEMORANDUM OF LAW IN SUPPORT**

COMES NOW Defendant, Ginger Bowden Madden, in her official capacity as the State Attorney for the First Judicial Circuit in and for Escambia County, Florida (the “State Attorney”), by and through undersigned counsel and pursuant to Federal Rule of Civil Procedure 56, respectfully submits this Motion for Summary Judgment and Incorporated Memorandum of Law in Support and in support thereof states the following:

**INTRODUCTION**

Plaintiff, Kells Hetherington, filed a one (1) count complaint alleging violations of his First Amendment right to free speech pursuant to 42 U.S.C. § 1983. [DE 1]. Plaintiff alleges that his right to free speech was violated during a 2018

election when Plaintiff ran for a seat on the Escambia County School Board. More specifically, the Florida Elections Commission (the “FEC”) investigated Plaintiff after receiving a complaint that he described himself as a “lifelong republican” during the campaign in violation of Fla. Stat. §106.143(3). The FEC found probable cause to impose a fine upon Plaintiff. Importantly, the FEC did not refer the complaint about Plaintiff’s statement to the State Attorney’s Office nor did the FEC seek advice or counsel from the State Attorney at any time regarding Plaintiff’s alleged misconduct, the subsequent investigation, findings, or ultimate fine. In fact, the State Attorney first learned of Plaintiff’s previous campaign and alleged violation of Fla. Stat. § 106.143(3) was when this action was filed.

Plaintiff alleges that he plans to again run in the nonpartisan election for Escambia County School Board and intends to make statements regarding his affiliation with the Republican party. Plaintiff’s action challenges the validity of Fla. Stat. § 106.143(3) which specifically prohibits candidates running for nonpartisan office from campaigning based on party affiliation. Plaintiff sued the State Attorney stating that he stands in fear of the State Attorney enforcing the challenged statute. Plaintiff files this action being fully aware that the State Attorney has never investigated or prosecuted Plaintiff based on any alleged violations of Florida’s election laws. Plaintiff instead asks the Court for injunctive relief against the State Attorney based on unfounded hypothetical conjecture rather than providing any facts

or evidence which support that he is legitimately in fear of enforcement from the State Attorney. Plaintiff's "fear" is unsupported by evidence and the plain reading of Fla. Stat. §§ 106.143, 106.265, and 106.25, which do not impart any authority upon the State Attorney to impose civil penalties for any alleged violation of the Fl. Stat. § 106.143. Plaintiff has offered no evidence to show a traceable injury by the State Attorney to support Plaintiff's "fear" of infringement of his First Amendment rights nor has he provided evidence to show that the injunctive relief sought will avoid any irreparable harm alleged in his Complaint.

Furthermore, the statute which Plaintiff challenges prevents Plaintiff from running for a non-partisan position based on party affiliation. The statute does not, however, prevent Plaintiff from stating his views on budgets, education, or any other matter which Plaintiff deems important to include in his platform for election to the Escambia County School Board. Section 106.143(3) is narrowly tailored and to serve Florida's compelling interest in maintaining the integrity of a non-partisan election and further ensuring that the right of Florida voters to vote without confusion or undue influence is maintained. The interest of maintaining the integrity of a non-partisan election is far greater than any minor burden placed on Plaintiff by not being able to state that he is running as a Republican.

Plaintiff's claims fail as a matter of law because he cannot establish a *prima facie* case of any deprivation or credible threat of deprivation of Plaintiff's rights to free speech by the State Attorney, and the Court should grant the instant motion.

### **STATEMENT OF UNDISPUTED FACTS**

Plaintiff ran for a nonpartisan seat on the Escambia County School Board in 2018. (Ex. A at ¶ 2). In May 2018, Michelle Salzman filed a complaint with the FEC alleging multiple violations of Florida's elections laws against Plaintiff. (Ex. A at ¶ 4; Ex. B at 3). Ms. Salzman's Complaint provided an excerpt of a statement made by Plaintiff which described his conservative ideals and further explained that Plaintiff was a "lifelong Republican." (Ex. B at 3). In response, the FEC conducted an investigation led by Keith Smith ("Mr. Smith"), Investigation Specialist for the FEC. (Ex. C at 1-3). The FEC's ROI detailed the steps taken by Mr. Smith on behalf of the FEC to investigate Plaintiff's alleged violation of Fla. Stat. § 106.14. *Id.* It is clear from the FEC's ROI, that the FEC did not refer the investigation to the State Attorney, the State Attorney was not consulted during the FEC's investigation, nor did the FEC receive any recommendations from the State Attorney regarding the allegations against Plaintiff. *Id.* The FEC concluded its investigation on May 1, 2019. *Id.*

On July 11, 2019, following the FEC's ROI, the FEC issued its Staff Recommendation Following Investigation ("SRFI") which provided the FEC's



recommendation of a finding of probable cause regarding Plaintiff's conduct in concurrence with the ROI. (Ex. D at 3). On or about August 13, 2019, the FEC issued its official finding of probable cause against Plaintiff. (Ex. E at 2). The FEC's finding of probable cause was based on Ms. Salzman's Complaint, FEC staff recommendations, and oral statements (if any) made at a probable hearing on the matter. *Id.* at 1. Importantly, the FEC's finding of probable cause was not based on any input whatsoever from the State Attorney's Office. *Id.* On November 19, 2019, the FEC entered its Final Order regarding Plaintiff's alleged violation of Fla. Stat. § 106.143. (*See generally*, Ex. F). The Final Order detailed the nature of the Complaint received by the FEC, the steps taken to investigate Plaintiff's alleged violations, and the findings of facts which the FEC used to determine that Plaintiff had violated Fla. Stat. § 106.143 and that Plaintiff should be fined \$500.00 for the noted violation. *Id.* At all times material to the investigation, finding of probable cause, and final disposition, all correspondence regarding the matter was transmitted from the FEC and did not include the State Attorney's Office in any manner. (*See* Exs. A-F) In fact, all of Plaintiff's correspondence regarding the reported violation of Fla. Stat. § 106.143 and the subsequent fine issued were directed only to the FEC and not the State Attorney's Office. (Ex. G). Plaintiff further noted that he was considering filing suit against the FEC and its staff. *Id.* At no time material to the allegations in Plaintiff's Complaint did Plaintiff allege any wrongdoing on part of

the State Attorney's Office to include any alleged violation of his right to free speech. *Id.* Indeed, in Plaintiff's declaration in support of his Motion for Preliminary Injunction, he does not mention any actions or wrongdoing on behalf of the State Attorney's Office regarding his previous campaign. *See generally* Ex. A. In fact, Plaintiff only details the FEC's involvement regarding his prior campaign violation and that he intends to run again in the future but is in fear of investigation, hearings and fines based on the *previous enforcement action*. (Ex. A at ¶¶ 4-7, and 12) (emphasis added).

#### **STANDARD FOR GRANTING SUMMARY JUDGMENT**

“[S]ummary judgment shall be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c); *Fernandez v. Bankers Nat'l Life Ins. Co.*, 906 F. 2d 559, 564 (11<sup>th</sup> Cir. 1990). The moving party bears the initial burden of showing the court that there is no genuine dispute concerning any material facts. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). The movant discharges its burden by showing the Court that there is an absence of evidence to support an essential element of the non-movant's case. *Id.* at 325. The party opposing summary judgment cannot rest on its pleadings or merely reassert its previous allegations. A “mere scintilla of evidence” supporting the non-movant's case is

insufficient to defeat a motion for summary judgment. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). Instead, the non-movant must go beyond the pleadings and “come forward with significant, probative evidence demonstrating the existence of a triable issue of fact.” *Chanel, Inc. v. Italian Activewear of Florida, Inc.*, 931 F. 2d 1472, 1477 (11<sup>th</sup> Cir. 1991).

In this case, Plaintiff’s claims are factually and legally insufficient to withstand a motion for summary judgment. Plaintiff has not and cannot provide any evidence to show that the State Attorney has previously or will in the future violate his First Amendment rights. Instead, Plaintiff’s claims are based solely on conclusory allegations which are insufficient to support a *prima facie* case against the State Attorney.

### **SUPPORTING MEMORANDUM OF LAW**

#### **A. Plaintiff Cannot Establish a *Prima Facie* Case Of Continuing Impact by the State Attorney Because the State Attorney is Not Authorized to Enforce or Impose Penalties for Violations of Fla. Stat. § 106.143.**

Plaintiff claims he is in fear that the State Attorney will enforce Fla. Stat. § 106.143(3) during his planned campaign for Escambia County School Board. However, Plaintiff provides no evidence that the State Attorney previously enforced Fla. Stat. § 106.143(3) against Plaintiff during his 2018 campaign, or that she would do so in the future.

Plaintiff's claims fail because he cannot establish sufficient evidence that the State Attorney has previously deprived, or is presently depriving, Plaintiff of his right to free speech. Furthermore, the State Attorney may only impose penalties as prescribed by law for alleged violations of Florida's election laws. Importantly, Fla. Stat. § 106.143 does not authorize the State Attorney to impose any civil penalties against a person alleged to have violated any provision of the statute. As such, Plaintiff cannot establish a threatened invasion of judicially cognizable interest because there are no facts which support that Plaintiff's alleged harm is actual or imminent rather than merely conjectural or hypothetical.

Section 106.143(3) provides that "[a] candidate for nonpartisan office is prohibited from campaigning based on party affiliation." The statute further provides that the statute "does not prohibit a political advertisement from stating the candidate's partisan-related experience." *Id.* Any person found in violation of any section of Chapter 106 is subject to the civil penalties prescribed in Fla. Stat. § 106.265. *See* Fla. Stat. § 106.143(11). Section 106.625(1) provides that the FEC or the administrative law judge ("ALJ"), when a case is referred to the Department of Administrative Hearings ("DOAH") pursuant to §106.25(5), are authorized to issue civil penalties for a violation of Fla. Stat. §106.143. Importantly, the civil penalties noted in §106.265 are the only appropriate penalties provided by statute. Notably, §106.265 does not authorize the State Attorney to impose any civil penalties upon

any person accused and/or found to have violated Fla. Stat. § 106.143. Instead, only the FEC or ALJ may determine and enforce civil penalties upon review of a complaint filed. Although Fla. Stat. § 106.25(6) imparts an obligation upon the State Attorney to investigate an alleged violation of Florida's election laws, this obligation is triggered *only when a case is referred by the FEC*. Even if the State Attorney were to conduct an investigation of Fla. Stat. § 106.143, the State Attorney may only undertake such criminal or civil actions *as are justified by law. Id.* (emphasis added). Indeed, the State Attorney is not justified by law to impose any penalties, civil or criminal, for a violation of Fla. Stat. § 106.143(3) based upon the plain reading of §106.265.<sup>1</sup>

Plaintiff has not and cannot provide any evidence to show that the State Attorney previously investigated and/or enforced any alleged violations of Fla. Stat. §106.143(3) during his 2018 campaign, nor can he provide evidence of any such credible future threat. Indeed, Plaintiff's own correspondence throughout the pendency of enforcement of the first violation was solely directed at the FEC as the sole enforcement agency of Plaintiff's civil penalty. In addition to Plaintiff's lack of

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<sup>1</sup> In contrast, Fla. Stat. § 106.08(7) prescribes that a person in violation of that statute may be found guilty of a misdemeanor in the first degree or a felony in the third-degree dependent upon the severity of the violation. *See* Fla. Stat. § 106.08(7)(a-b). Penalties for such violations are as prescribed by Fla. Stat. §775.082 which specifically outlines various criminal penalties justified by law and shall be imposed by the State Attorney.

evidence to support sustaining a claim against the State Attorney, the statutory provisions of Fla. Stat. §§ 106.143(3) and 106.265 clearly establish that the only agencies authorized by law to impose civil penalties for violation of Fla. Stat. §106.143(3) are the FEC and an ALJ upon receiving referral of a case pursuant to Fla. Stat. §106.25(5).<sup>2</sup>

Pursuant to Florida law, the State Attorney is not the proper enforcing authority of Fla. Stat. § 106.143, and Plaintiff cannot prove otherwise. This flaw is fatal to his claims, as the statutory provisions clearly delineate which agencies may enforce the civil penalties prescribed by the challenged statute, and the State Attorney is not one of those agencies. Even if Plaintiff could establish that the State Attorney was alternatively charged with the enforcement responsibility which he cannot, there is no evidence to show that Plaintiff is legitimately in fear of such enforcement of Fla. Stat. §106.143(3). At most, the State Attorney could investigate an alleged violation of Fla. Stat. § 106.143(3), but only if such violation is referred by the FEC. However, even if the State Attorney were to conduct an investigation, the State Attorney is not authorized to enforce the provisions of Fla. Stat. §106.143 or impose any civil penalties as a result of any alleged violation.

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<sup>2</sup> A referral pursuant to Fla. Stat. §106.25(5) occurs only when a person alleged by the FEC to have committed a violation of Chapter 106 elects, as a matter of right, within thirty (30) days after the date of filing of the allegations, to have a formal hearing in front of an ALJ.

Summary judgment in the State Attorney's favor is proper because there are no material facts in dispute, and there is no evidence supporting Plaintiff's position.

**B. Fla. Stat. § 106.143(3) Serves a Compelling State Interest and is Narrowly Tailored to Serve the State's Compelling Interest.**

Even if the Court were to determine that the State Attorney is an enforcement authority of Fla. Stat. §106.143(3), Plaintiff's claims still fail as the provisions contained in the challenged statute serve a compelling state interest and are narrowly tailored to serve that interest.

Plaintiff challenges Fla. Stat. § 106.143(3) stating that it prevents his right to free speech by forbidding Plaintiff from stating his political affiliation during his campaign for non-partisan office. However, there are no provisions of the challenged statute which prevent Plaintiff from expressing past positions held by him, previous political experience, or opinions on important issues. Plaintiff is simply prevented from stating his party affiliation during the pendency of his campaign for the purpose of ensuring integrity in a non-partisan election and to further prevent voter confusion at the ballot box. Section 106.143(3) is narrowly tailored to achieve the State's interest as it is reasonable, viewpoint neutral legislation intended to protect the integrity of Florida's non-partisan elections.

As previously explained by the FEC, there is a compelling interest to ensure that Florida's voters' fundamental right to vote is protected by ensuring a non-partisan election is free from confusion. Here, Plaintiff is asking the Court to find

that his right to expression of his political affiliation essentially outweighs the protection of Florida voter's right to vote free from confusion and undue influence. Importantly the "right to vote freely for the candidate of one's choice is of the essence of a democratic society." *Burson v. Freeman*, 504 U.S. 191, 199 (citing *Reynolds v. Sims*, 377 U.S. 533, 552 (1964)). "Other rights, even the most basic, are illusory if the right to vote is undermined." *Id.* (citing *Wesberry v. Sanders*, 326 U.S. 1, 17 (1964)). Indeed, it has previously been decided that a State has a compelling interest in protecting voters from confusion and undue influence. *See Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 228-29 (1989). It has also been recognized that a State "indisputably has a compelling interest in preserving the integrity of its election process." *Id.* at 231. Thus, it is without question that Florida has a compelling interest in maintaining the integrity of its non-partisan elections and Fla. Stat. § 106.143(3) is narrowly tailored to serve that interest. The key concept of Fla. Stat. § 106.143(3) is to prevent those running for non-partisan office from running as a party candidate. Section 106.143(3) does not limit a candidate's freedom of expression of his views. In fact, a candidate running for non-partisan may communicate his viewpoints, his previous experiences and opinions, and any other issue which the candidate deems important. The only restriction on a candidate for non-partisan office is that he cannot communicate his party affiliation. The purpose of this restriction is to ensure that a voter has a fair and reasonable opportunity to



examine a non-partisan candidate on a basis other than party affiliation and to prevent voter confusion in expecting to see a party label next to a candidate name at the ballot box.

Further, Fla. Stat. § 106.143(3) is not underinclusive for failure to restrict all expression regarding party affiliation. The failure to regulate all speech does render a statute fatally underinclusive when faced with a strict scrutiny analysis. *Burson*, 504 U.S. at 207. In order to protect the integrity of Florida's non-partisan elections there has to be some restriction in place to ensure the integrity that a non-partisan election remain exactly that. It is without question that ensuring the integrity of a non-partisan election free from confusion is necessary to further the State's compelling interest. To require the State to prove that such voter confusion would occur by allowing non-partisan candidates to run based on their party affiliation is implausible as voter confusion is nearly impossible to detect. *See Burson*, 504 U.S. at 208 (holding that a Tennessee statute was not underinclusive for failing to isolate the effect of statutes on voter intimidation where voter intimidation was and has always been difficult to detect). To require proof that Fla. Stat. § 106.143(3)'s provisions are perfectly tailored to address the issue of voter confusion "would necessitate that a State's political system sustain some level of damage before the legislature could take corrective action." *Id.* (quoting *Munro v. Socialist Workers Party*, 479 U.S. 189, 195 (1986)). Instead, a State "should be permitted to respond

to potential deficiencies in the electoral process with foresight rather than reactively, provided that the response is reasonable and does not significantly impinge on constitutionally protected rights.” Id. at 195-96.

Here, the limitations of Fla. Stat. § 106.143(3) do not constitute a significant impingement. Instead, the challenged statute ensures the integrity of Florida’s non-partisan elections and protects voters from unnecessary confusion while at the ballot box in deciding how to vote for a non-partisan candidate. The State’s interest of maintaining the integrity of non-partisan elections is significant and the burden placed upon Plaintiff, if any, is slight as Plaintiff is free to engage in rhetoric which describes his past positions or his opinions on important issues. Plaintiff is merely prevented from stating that he is running as a Republican which would undoubtedly cause voter confusion in the upcoming non-partisan election. While it is undeniable that Plaintiff is entitled to the exercise of free speech, it is also undeniable that Florida voters have a right to cast a ballot free from confusion or undue influence in a non-partisan election. In weighing these two rights, the Court should find that the provisions contained in Fla. Stat. § 106.143(3) do not constitute an unconstitutional compromise.

### **CONCLUSION**

The undisputed record evidence shows that Plaintiff cannot maintain an action against the State Attorney for any alleged deprivation of Plaintiff’s right to free

speech as the State Attorney has no authority under the law to impose penalties for any alleged violations of Fla. Stat. §106.143(3). Furthermore, any limitations placed on Plaintiff by the statute are minimal as Plaintiff may engage in speech which undoubtedly shows his political views regarding issues of importance during the upcoming non-partisan election. The challenged statute is narrowly tailored to serve the State's compelling interest in non-partisan elections to and further protect voters from undue influence or confusion. Therefore, the State Attorney is entitled to summary judgment on all of Plaintiff's claims including nominal damages, injunctive relief, attorney's fees, and any such further relief sought by Plaintiff.

Respectfully submitted this 27th day of December 2021.

/s/ Jennifer K. Sniadecki

Mark L. Bonfanti

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1241 Airport Road, Suite A

Destin, Florida 32541

Telephone: (850) 502-2004

Facsimile: (404) 537-5555

*Counsel for the State Attorney*

**LOCAL RULE 7.1(F) CERTIFICATION**

I CERTIFY that the pertinent part of this Motion does not exceed 3468 words.

**CERTIFICATE OF SERVICE**

I CERTIFY that on this 27th day of December 2021, the within and foregoing document has been filed using the CM/ECF System which will automatically serve all counsel of record.

/s/ Jennifer K. Sniadecki  
Jennifer K. Sniadecki

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

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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**

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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

FLORIDA ELECTIONS COMMISSION  
107 West Gaines Street, Suite 224, Tallahassee, FL 32399-1050

EXHIBIT B

REC'D: FL ELECTIONS COM  
25 MAY '18 AM 10:34

### COMPLAINT

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

**1. PERSON BRINGING COMPLAINT:**

Name: Michelle Salzman Work Phone: (850) 2075024  
Address: 10296 Vintage Dr Home Phone: (850) 2075024  
City: Pensacola County: Escambia State: FL Zip Code: 32514

**2. PERSON AGAINST WHOM COMPLAINT IS BROUGHT:**

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

Name of individual or entity: Kells Hetherington  
Address: 10335 Gulf Beach Hwy Apt 708 Phone: (202) 431-0482  
City: Pensacola County: Escambia State: FL Zip Code: 32507

If individual is a candidate, list the office or position sought: School Board - District 2

Have you filed this complaint with the State Attorney's Office? (check one)  Yes  No  
Are you alleging a violation of Section 104.271(2), F.S.? (check one)  Yes  No  
Are you alleging a violation of Section 104.2715, F.S.? (check one)  Yes  No

**3. ALLEGED VIOLATION(S):**

Please attach a **concise** narrative statement in which you list the provisions of the Florida Election Code that you believe the person named above may have violated. The Commission has jurisdiction only to investigate provisions of Chapter 104 and Chapter 106, Florida Statutes. Please include the following items as part of your attached statement:

- The facts and actions that you believe support the violations you allege;
- The names/telephone numbers of persons whom you believe may be witnesses to the facts;
- A copy or picture of any political advertisement(s) you mention in your statement;
- A copy of each document you mention in your statement;
- An explanation of why you believe information you reference from websites is relevant; and
- Any other evidence supporting your allegations.

**SEE REVERSE SIDE OF DOCUMENT FOR ADDITIONAL INFORMATION**

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

FLORIDA ELECTIONS COMMISSION  
107 West Gaines Street, Suite 224, Tallahassee, FL 32399-1050

REV: FL ELECTIONS COM  
25 MAY '18 AM 10:34

4. **OATH:**

STATE OF FLORIDA  
COUNTY OF Escambia

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

  
Original Signature of Person Bringing Complaint

Sworn to and subscribed before me this 22nd day of  
May, 20 18

  
Signature of Officer Authorized to Administer Oaths or Notary Public



APRIL LANNETTE PAWLESS  
MY COMMISSION # FF 914180  
EXPIRES: August 30, 2019  
Bonded Thru Budget Notary Services

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

Personally Known  Or Produced Identification

Type of Identification Produced personally known

5. **IMPROPERLY COMPLETED COMPLAINT FORMS MAY BE RETURNED:**

- You **MUST submit this** completed complaint **form** in order to file a complaint.
- You **MUST** complete **ALL FOUR** of the above sections of this form. **DO NOT** leave any blanks.
- You **MUST** submit the **ORIGINAL** complaint form. Copied/faxed/emailed forms are returned.
- Each complaint can only be filed against **ONE PERSON** or **ENTITY**. If you wish to file against multiple parties, you **MUST** submit a complaint form **for each party** you wish to file against.
- **DO NOT** submit multiple complaint forms with one set of attachments applying to multiple complaints. You **MUST** attach **copies** of attachments **to each complaint** to which they apply.
- **MAKE SURE** the alleged violation(s) of **Chapters 104 or 106** occurred within the last **2 years**.
- **MAKE SURE** your complaint is **sworn** and there is **no defect** to the **notarization** in Section 4.



# STATEMENT

Kells Hetherington is in direct violation of Florida Statue 106.143 paragraph (3):

LISTED ON THE ESCAMBIAVOTES.COM/CANDIDATE-LIST:

## Contact Information:

10335 Gulf Beach Hwy Apt 708  
Pensacola, FL - 32507  
[kellshetherington@gmail.com](mailto:kellshetherington@gmail.com)  
(202)431-0482

## Candidate's Statement

My name is Kells Hetherington, I'm 39-years-old and my wife Alison and I own a home on Gulf Beach Highway in District 2. After getting married in Washington D.C, my wife and I moved to Pensacola where we have family nearby. We were attracted by the low taxes and conservative ideals that this community offers.

In Washington, I worked for Tucker Carlson as Deputy Editor of his online news outlet, The Daily Caller. I also worked for the Voice of America. Earlier, I lived in Alaska for five years where I was General Manager of a public radio station in the Aleutian Islands. I graduated with a Bachelor of Science from Manhattanville College.

Here in Pensacola, I work in finance, building mathematical models and trading a portfolio of stocks, bonds and options. I have been trading successfully for over twenty years. On weekends you'll find me on my Sunfish sailing on Big Lagoon. A lifelong Republican, I was raised in the Congregationalist Church.

My greatest supporter is my lovely wife, Alison. She homeschools a student in Pensacola. When we first moved to Pensacola, she was a substitute teacher in Escambia County public schools. She has been an advocate for women with ovarian cancer for over a decade and is a board member of the Ovarian Cancer Research Fund Alliance. She's also actively involved with IMPACT 100 right here in Pensacola.

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 member.

**Note: The candidate's photograph and statement are supplied by the candidate and are not endorsed by the County Supervisor of Elections or checked for accuracy.**

He also specifically mentions his intentions to bring the conservative and republican agenda to the school board, a nonpartisan seat and race. Although, I am a republican, this is a direct and an intentional violation of our laws.. and he has been challenged about this several times he deletes the challenging comments on his political site as if no one asked. I challenged his statement about this in a public forum at a local candidate meet and greet and he had no response.

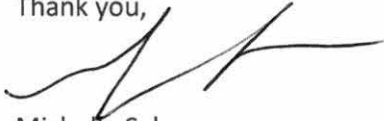
Further, he obtained his petitions by illegally soliciting signatures outside of a local grocery store. I have enclosed a couple screen shots of people who complained about his harassment as well as statements from the grocery chain's policy that strictly prohibit petitions of any kind be solicited for in their parking lot.

He has been cyber stalking and cyber bullying many local citizens while seeking this candidacy.

He has only lived here since November and is already about to be on the ballot of an election?

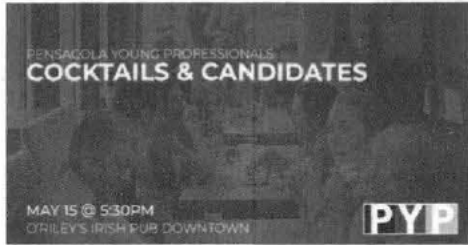
I have attached screen shots of various conversations on social media from many different citizens. He has been in clear violation of so many laws and rules.

Thank you,



Michelle Salzman

(see page 3 with screenshots)



TUE, MAY 15  
**Cocktails & Candidates**  
O'Riley's Irish Pub Downtown · Pen...  
You like Pensacola Young Professionals

This is the open forum where he specifically stated his political affiliation and how he wanted to push the conservative agenda on the school board and throughout the Escambia County School District.

**Pueschel Studstill Schneier**  
He must have sent everyone in Escambia County a friend request including me. When I met him in person, I told him we were friends on Facebook and he acted like he had no idea what I was talking about. He unfriended me last night when he blocked Michelle. The nerve!  
3d Like Reply

**Jacqueline Aimee Rogers**  
Wow! He sent requests to people out of state also. What candidate creates this ill will?  
Who is he?  
3d Like Reply

**Pueschel Studstill Schneier**  
**Jacqueline Aimee Rogers** I met him at the REC meeting. He asked me to sign a petition,

**Kim Paul Adkison**  
I was helping Doug Underhill with his petitions and Mr. Hetherington approached me and asked if I would sign one of his petitions. I politely told him I don't reside in his district. I asked if he would sign an Underhill petition and he not only signed one for himself, he took the liberty of signing a petition in his wife's name....even told me he was doing it. You cannot sign a petition for another voter....and he wants to represent D2 on the School Board. If it looks like a skunk and smells like a skunk. You can be pretty sure, HE is a skunk!

3d Like Reply

**Douglas Underhill**  
For the record, we did not turn in the fraudulent petition. Lol.  
3d Haha Reply

A specific witness of him falsifying voter petitions.  
source: Escambia County Citizens Watch Facebook Group

Other examples  
source: Escambia County Citizens Watch Facebook Group

**Jacqueline Aimee Rogers**  
I have had some strange interactions with him as well. I asked for a thread on ECW wh hadn't gotten to as I was out of town and several family events He met my adult daughter at a ground breaking and started requesting to be 'friends' with FB friends. He mentioned that met her and I asked him why h was sending requests to all her friends. He denied it and said I was friending people from the Underhill District 2 list but the requests were to my adult kids and other friends that live out state, one in another country a "know" that they don't follow c care about Escambia County politics. But he repeated his claim. Very odd. Then I am told that he is telling people that he is doing opposi research against Underhill?!!! Is he even a real candidate because who would create the

1 of 2

town and several family events. He met my adult daughter at a ground breaking and started requesting to be 'friends' with her FB friends. He mentioned that he met her and I asked him why he was sending requests to all her friends. He denied it and said he was friending people from the Underhill District 2 list but the requests were to my adult kids and other friends that live out of state, one in another country and "know" that they don't follow or care about Escambia County politics. But he repeated his claim. Very odd. Then I am told that he is telling people that he is doing opposition research against Underhill?!!! Is he even a real candidate because who would create that kind of situation hoping to represent District 2 as a candidate. What if he won and Underhill was reelected? Built in animosity... Odd.

2 of 2

An example of him requesting petitions signed.  
source: Escambia County Citizens Watch Facebook Group

**Jacqueline Aimee Rogers**  
Of course, I got a friend request from him. Lol. And a friend of ours got one from his wife.  
3d Like Reply

**Douglas Underhill**  
He asked me to sign a petition for him at the Innerarity Park Groundbreaking, which of course I did. Then I asked the one question I always ask: Why are you running? He answered, "I always wanted to be in politics." I told him that was the worst possible answer. No politicians in our schools, please.  
3d Like Reply

View 9 previous replies...

page 3 of 3



**FLORIDA ELECTIONS COMMISSION  
REPORT OF INVESTIGATION**

**Case No.: FEC 18-133**

**Respondent:** Kells Hetherington  
**Counsel for Respondent:** John W. Hetherington

**Complainant:** Michelle Salzman

On May 25, 2018, the Florida Elections Commission (Commission) received a sworn complaint alleging that Respondent violated Chapter 106, Florida Statutes. Commission staff investigated whether Respondent violated the following statute:

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

**I. Preliminary Information:**

1. Respondent, Kells Hetherington, was a 2018 candidate for the Escambia County School Board, District 2; he was defeated during the primary election held on August 28, 2018. Respondent was a first-time candidate.

2. On April 27, 2018, Respondent's "APPOINTMENT OF CAMPAIGN TREASURER AND DESIGNATION OF CAMPAIGN DEPOSITORY FOR CANDIDATES" form (DS-DE 9) was filed with the Escambia County Supervisor of Elections office. Respondent appointed himself as campaign treasurer. To review the DS-DE 9 form, refer to Exhibit 1.

3. Respondent is represented by John W. Hetherington.

4. Complainant, Michelle Salzman, is a former president of the Escambia County PTA council.

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

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

6. The 2018 Escambia County Candidate Handbook identifies candidates for school board member as a nonpartisan office. In addition, Respondent signed a "Candidate Oath – School Board Nonpartisan Office" form as a candidate for the nonpartisan office of School Board, District 2. To review the relevant page from the county handbook as well as Respondent's signed "Candidate Oath," refer to Exhibit 2.

7. Complainant offered with her complaint a copy of Respondent's "Candidate's

Statement” that was posted on the Escambia County Supervisor of Elections website. Complainant noted two references within the statement: “conservative ideas” and “A lifelong Republican.”

8. The last sentence of the first paragraph reads, “We were attracted by the low taxes and conservative ideas that this community offers.” The last sentence of the third paragraph reads, “A lifelong Republican, I was raised in the Congregationalist Church.” To review the “Candidate’s Statement,” refer to Exhibit 3.

9. In a response to the complaint, Respondent stated his biography “can damn well say that I’m a lifelong Republican. My First Amendment right to free speech is not abridged simply because I’m running in a nonpartisan race. The prohibition is on my campaigning as a Republican, which I have not done.” To review Respondent’s response, refer to Exhibit 4.

10. In a questionnaire-affidavit, Respondent was asked whether he had anyone review his candidate’s statement prior to having it posted on the supervisor of elections website and whether he sought legal advice or reviewed any Division of Elections opinions; Respondent did not return the questionnaire-affidavit<sup>1</sup>. To review the questionnaire-affidavit, refer to Exhibit 5.

11. Commission staff reviewed Respondent’s “Candidate’s Statement” on June 19, 2018, and noticed the wording, “A lifelong Republican” had been changed to read, “A lifelong conservative ...” To review the “Candidate’s Statement” from June 19, 2018, refer to Exhibit 6.

12. In a questionnaire-affidavit, Respondent was asked to explain why the verbiage, “A lifelong Republican” was changed to “A lifelong conservative.” As noted in paragraph 10, Respondent did not return the questionnaire-affidavit.

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

### III. FEC History:

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

### Conclusion:

15. In an affidavit, Escambia County Supervisor of Elections David H. Stafford attested that Respondent was provided with Chapter 106, Florida Statutes as well as the *Candidate and Campaign Treasurer Handbook*. The supervisor of elections also attested that their office had no record of Respondent having sought elective office prior to his 2018 campaign. In addition, Mr. Stafford attested that their office had no recollection of having any conversation with Respondent relative to campaigning based on party affiliation or any record of anything in writing discussing the issue with Respondent. To review the affidavit of the Escambia County Supervisor of Elections, refer to Exhibit 7.

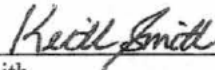
---

<sup>1</sup> The questionnaire-affidavit was e-mailed to Respondent’s attorney on April 2, 2019 and was due April 19, 2019.



16. Respondent executed a Statement of Candidate indicating that he had been provided access to read and understand the requirements of Chapter 106, Florida Statutes; the form is dated April 27, 2018. To review the Statement of Candidate, refer to Exhibit 8.

Respectfully submitted on May 1, 2019.



Keith Smith  
Investigation Specialist

**Current address of Respondent**

Kells Hetherington  
10335 Gulf Beach Highway – Apt. #208  
Pensacola, Florida 32509

**Current address of Complainant**

Michelle Salzman  
10296 Vintage Drive  
Pensacola, Florida 32514

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

John W. Hetherington  
155 East Avenue  
New Canaan, Connecticut 06840

**Name and Address of Filing Officer:**

The Honorable David H. Stafford  
Supervisor of Elections  
213 Palafox Place – Second Floor  
Pensacola, Florida 32502

Copy furnished to: David Flagg, Investigations Manager

**FLORIDA ELECTIONS COMMISSION**  
**REPORT OF INVESTIGATION**  
**Kells Hetherington -- FEC 18-133**

<b>LIST OF EXHIBITS</b>	
<b>Exhibits #s</b>	<b>Description of Exhibits</b>
Exhibit 1	DS-DE 9 form
Exhibit 2	Relevant pages from county handbook/Candidate Oath
Exhibit 3	"Candidate's Statement" submitted w/complaint
Exhibit 4	Response to the complaint
Exhibit 5	Questionnaire-affidavit
Exhibit 6	"Candidate's Statement" from June 19, 2018
Exhibit 7	SOE affidavit
Exhibit 8	Statement of Candidate

**APPOINTMENT OF CAMPAIGN TREASURER  
AND DESIGNATION OF CAMPAIGN  
DEPOSITORY FOR CANDIDATES**  
(Section 106.021(1), F.S.)

18 APR 27 11:51

**COPY**

(PLEASE PRINT OR TYPE)

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

OFFICE USE ONLY

<b>1. CHECK APPROPRIATE BOX(ES):</b> <input checked="" type="checkbox"/> Initial Filing of Form    Re-filing to Change: <input type="checkbox"/> Treasurer/Deputy <input type="checkbox"/> Depository <input type="checkbox"/> Office <input type="checkbox"/> Party					
<b>2. Name of Candidate</b> (in this order: First, Middle, Last) Kells Luke Hetherington			<b>3. Address</b> (include post office box or street, city, state, zip code) 10335 Gulf Beach Highway Apt 708 Pensacola, FL 32507		
<b>4. Telephone</b> (202) 431-0482		<b>5. E-mail address</b> Kellsbetherington@gmail.com			
<b>6. Office sought</b> (include district, circuit, group number) Escambia County School Board (2nd District)			<b>7. If a candidate for a <u>nonpartisan</u> office, check if applicable:</b> <input type="checkbox"/> My intent is to run as a Write-In candidate.		
<b>8. If a candidate for a <u>partisan</u> office, check block and fill in name of party as applicable:</b> My intent is to run as a <input type="checkbox"/> Write-In <input type="checkbox"/> No Party Affiliation <input type="checkbox"/> _____ Party candidate.					
<b>9. I have appointed the following person to act as my</b> <input checked="" type="checkbox"/> Campaign Treasurer <input type="checkbox"/> Deputy Treasurer					
<b>10. Name of Treasurer or Deputy Treasurer</b> Kells Hetherington					
<b>11. Mailing Address</b> 10335 Gulf Beach Highway Apt 708				<b>12. Telephone</b> (202) 431 0482	
<b>13. City</b> Pensacola		<b>14. County</b> Escambia	<b>15. State</b> FL	<b>16. Zip Code</b> 32507	<b>17. E-mail address</b> Kellsbetherington@gmail.com
<b>18. I have designated the following bank as my</b> <input checked="" type="checkbox"/> Primary Depository <input type="checkbox"/> Secondary Depository					
<b>19. Name of Bank</b> Wells Fargo			<b>20. Address</b> 21 E Garden Street		
<b>21. City</b> Pensacola		<b>22. County</b> Escambia	<b>23. State</b> FL	<b>24. Zip Code</b> 32501	
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.					
<b>25. Date</b> April 27, 2018			<b>26. Signature of Candidate</b> X <i>[Signature]</i>		
<b>27. Treasurer's Acceptance of Appointment</b> (fill in the blanks and check the appropriate block)					
I, <u>Kells Hetherington</u> , do hereby accept the appointment (Please Print or Type Name)					
designated above as: <input checked="" type="checkbox"/> Campaign Treasurer <input type="checkbox"/> Deputy Treasurer.					
Date <u>April 27, 2018</u> X			Signature of Campaign Treasurer or Deputy Treasurer <i>[Signature]</i>		

**EXHIBIT**





**2018**

**Escambia County  
Candidate  
Handbook**

**David H. Stafford, CERA**  
Escambia County Supervisor of Elections

EXHIBIT 2 (1 of 4)

**David H. Stafford**  
Supervisor of Elections  
Escambia County

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EXHIBIT 2 (2 of 4)



David H. Stafford  
 Supervisor of Elections  
 Escambia County

## 2018 Local Offices Up for Election and Terms

<i>Judicial (Nonpartisan)</i>	
<i>Per State Constitution, Article V, Section 10, 1<sup>st</sup> Tuesday after 1<sup>st</sup> Monday in January</i>	<i>Term Begins</i>
County Court Judge, Groups 2, 4 and 5 (6 year term)	Tuesday, January 8, 2019
<i>County and School Board</i>	
<i>Per Florida Statutes 100.041(2)(a) &amp; (3)(a), 2<sup>nd</sup> Tuesday following General Election</i>	<i>Term Begins</i>
County Commissioner, Districts 2 and 4 (Partisan - 4 year term)	Tuesday, November 20, 2018
School Board Member, Districts 1, 2 and 3 (Nonpartisan - 4 year term)	Tuesday, November 20, 2018
<i>Special Districts</i>	
<i>Per Laws of Florida Chapter 2001-324 Section 4(b), 2<sup>nd</sup> Tuesday following General Election</i>	<i>Term Begins</i>
Emerald Coast Utilities Authority, Districts 2 & 4 (Partisan - 4 year term)	Tuesday, November 20, 2018
<i>Per Laws of Florida, Chapter 83-407 Section 3(b)(2) - Election Night</i>	<i>Term Begins</i>
Santa Rosa Island Authority (Nonpartisan - 2 year term)	Tuesday, November 6, 2018
<i>Per Florida Statutes 582.18, 1<sup>st</sup> Tuesday after 1<sup>st</sup> Monday in January</i>	<i>Term Begins</i>
Escambia Soil and Water Conservation District, Groups 2, 4, and 5 (Nonpartisan - 4 year term) (Group 5 is to fill remaining 2 year term)	Tuesday, January 8, 2019
<i>City of Pensacola (Nonpartisan)</i>	
<i>Per City Charter, Article III, Section 6.07, 4<sup>th</sup> Tuesday in November</i>	<i>Term Begins</i>
Mayor of Pensacola (4 year term)	Tuesday, November 27, 2018
City Council, Districts 2, 4 and 6 (4 year term)	Tuesday, November 27, 2018
<i>Town of Century (Nonpartisan)</i>	
<i>Per Century Town Charter Section 5.05 (c)</i>	<i>Term Begins</i>
<i>1<sup>st</sup> Monday in January, following the regular town election</i>	
Century Town Council, Seats 3, 4 and 5 (4 year term)	Monday, January 7, 2019

EXHIBIT 2 (3&4)



**CANDIDATE OATH –  
SCHOOL BOARD  
NONPARTISAN OFFICE**

18 JUN 22 8:51 AM

Check box *only* if you are seeking to qualify as a write-in candidate:

Write-in candidate

**OFFICE USE ONLY**

**Candidate Oath**  
(Sections 99.021(1)(a) and 105.031, Florida Statutes)

I, Kells Hetherington

*(Print name above as you wish it to appear on the ballot. If your last name consists of two or more names but has no hyphen, check box . (See page 2 - Compound Last Names). No change can be made after the end of qualifying. Although a write-in candidate's name is not printed on the ballot, the name must be printed above for oath purposes.)*

am a candidate for the nonpartisan office of School Board, 2  
(Office) (District #)

I am a qualified elector of Escambia County, Florida;  
(Circuit #) (Group or Seat #)

I am qualified under the Constitution and the Laws of Florida to hold the office to which I desire to be nominated or elected; I have qualified for no other public office in the state, the term of which office or any part thereof runs concurrent with the office I seek; and I have resigned from any office from which I am required to resign pursuant to Section 99.012, Florida Statutes; and I will support the Constitution of the United States and the Constitution of the State of Florida.

**Section 876.05, Florida Statutes, oath (only applicable if elected and when term of office begins):** I, a citizen of the State of Florida and of the United States of America, and being employed by or an officer of the school board and a recipient of public funds as such employee or officer, do hereby solemnly swear or affirm that I will support the Constitution of the United States and of the State of Florida.

Candidate's Florida Voter Registration Number (located on your voter information card): [REDACTED]

Phonetic spelling for audio ballot: Print name phonetically on the line below as you wish it to be pronounced on the audio ballot as may be used by persons with disabilities (see instructions on page 2 of this form): *[Not applicable to write-in candidates.]*

[REDACTED]

X Kells Hetherington (22) 431 - 0482 Kellsbetherington@gmail.com  
Signature of Candidate Telephone Number Email Address

10335 Gulf Beach Highway A, Pensacola FL 32507  
Address City State ZIP Code

STATE OF FLORIDA  
COUNTY OF Escambia

Kellee A. Baker  
Signature of Notary Public  
Print, Type, or Stamp the Name of Notary Public below:  
STATE OF FLORIDA  
Comm# FF241949  
Expires 8/21/2019

Sworn to (or affirmed) and subscribed before me this 22  
day of June, 2018.

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

Type of Identification Produced: FDL EXHIBIT 2 (A & A)

# STATEMENT - 3

Kells Hetherington is in direct violation of Florida Statute 106.143 paragraph (3):

LISTED ON THE ESCAMBIAVOTES.COM/CANDIDATE-LIST:

## Contact Information:

10335 Gulf Beach Hwy Apt 708  
Pensacola, FL - 32507  
[kellshetherington@gmail.com](mailto:kellshetherington@gmail.com)  
(202)431-0482

## Candidate's Statement

My name is Kells Hetherington, I'm 39-years-old and my wife Alison and I own a home on Gulf Beach Highway in District 2. After getting married in Washington D.C, my wife and I moved to Pensacola where we have family nearby. We were attracted by the low taxes and conservative ideals that this community offers.

In Washington, I worked for Tucker Carlson as Deputy Editor of his online news outlet, The Daily Caller. I also worked for the Voice of America. Earlier, I lived in Alaska for five years where I was General Manager of a public radio station in the Aleutian Islands. I graduated with a Bachelor of Science from Manhattanville College.

Here in Pensacola, I work in finance, building mathematical models and trading a portfolio of stocks, bonds and options. I have been trading successfully for over twenty years. On weekends you'll find me on my Sunfish sailing on Big Lagoon. A lifelong Republican, I was raised in the Congregationalist Church.

My greatest supporter is my lovely wife, Alison. She homeschools a student in Pensacola. When we first moved to Pensacola, she was a substitute teacher in Escambia County public schools. She has been an advocate for women with ovarian cancer for over a decade and is a board member of the Ovarian Cancer Research Fund Alliance. She's also actively involved with IMPACT 100 right here in Pensacola.

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 member.

**Note: The candidate's photograph and statement are supplied by the candidate and are not endorsed by the County Supervisor of Elections or checked for accuracy.**

He also specifically mentions his intentions to bring the conservative and republican agenda to the school board, a nonpartisan seat and race. Although, I am a republican, this is a direct and an intentional violation of our laws.. and he has been challenged about this several times he deletes the challenging comments on his political site as if no one asked. I challenged his statement about this in a public forum at a local candidate meet and greet and he had no response.

EXHIBIT 3





Response to Michelle Salzman complaint

Kells Hetherington

to:

fec, Kells Hetherington

06/11/2018 06:52 PM

Hide Details

From: "Kells Hetherington" <kellshetherington@gmail.com>

To: fec@myfloridalegal.com, "Kells Hetherington" <kellshetherington@gmail.com>

**This is in response to the complaint filed by Ms. Michelle Salzman:**

I think the real issue Ms. Salzman has with me is my response to the question below asked by a friend of hers:

18 MAY 21:38



What is Your opinion on lgbtQ training for teachers

Hi Josh, no I do not think it is necessary.

Sent by Alison Hetherington [?]

Well u should do a survey and see , see how your lgbtq youth feel about they way there treated in schools . If well surprise you to see how much it actually is needed . You need to be informed about this if you want a chance at winning . School broad need to be diverse and well informed unfortunately your not .

If you taken a look at my profile u would have seen I am gay and a lgbtq

if you taken a look at my profile u would have seen I am gay and a lgbtq youth advocate among others nonprofit in Pensacola ... I never heard of you . Why did you request me to add you ?



Do u know ms salzman ?

It was shortly after this that we began hearing from her and her husband and many of her friends for the first time.

Her other concerns are completely misplaced:

Collecting signatures outside a store that allows me to be there is totally within my rights, as is running for public office so long as I am a resident of this district on the date of the election. And my biography can damn well say that I'm a life-long Republican. My First Amendment right to free speech is not abridged simply because I'm running in a nonpartisan race. The prohibition is on my campaigning as a Republican, which I have not done. Ms Salzman would be well served to

EXHIBIT 4 (1 & 2)

get her facts straight before she continues to be a nuisance.

Ms. Salzman and her husband began stalking and bullying my wife and me online May 18, a week before she filed this frivolous complaint in which she has perjured herself. Not only that, but she rounded up a group of her online friends to join in her bullying attacks against me. Can you imagine this woman is the outgoing president of the PTA in Escambia County?

Ms. Salzman and her husband are bullies and if they are intent on bullying me further, I will not hesitate to take legal action.

I'm asking that the commission dismiss this frivolous complaint with prejudice.

--  
Kells Hetherington

Cell: (202) 431-0482

EXHIBIT 4 (2 of 2)

**AFFIDAVIT OF BACKGROUND INFORMATION**  
**Case Number: FEC 18-133**

**STATE OF FLORIDA**  
**County of Escambia**

**Kells Hetherington, being duly sworn, says:**

1. This affidavit is made upon my personal knowledge.
2. I am of legal age and competent to testify to the matters stated herein. I am currently employed by \_\_\_\_\_ as \_\_\_\_\_.
3. Prior to your 2018 campaign, had you ever run for public office? If so, please name the office(s) you ran for and the date(s) of the election(s) you ran in.  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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

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

**EXHIBIT** 5 (1 of 3)



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

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

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

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

13. As part of the complaint, Ms. Salzman offered a copy of your "Candidate's Statement" which appeared to be posted on the supervisor of elections website. Were you solely responsible for creating/drafting the "Candidate's Statement"? ( ) Yes ( ) No. If no, please provide the name(s) of any individual(s) who assisted you.

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

14. After creating/drafting the "Candidate's Statement," but prior to having it posted on the Escambia County Supervisor of Elections website, did you have anyone review it for you? If so, please provide the name(s) of any individual(s) who reviewed the statement and explain why you had him/her review the statement for you.

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

15. Prior to having the "Candidate's Statement" posted on the Escambia County Supervisor of Elections website, did you seek any legal advice from an attorney to determine whether the statement could be construed to be in violation of the election laws? ( ) Yes ( ) No. If yes, please provide the name of the attorney and his/her area of practice.

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

16. Prior to having the "Candidate's Statement" posted on the Escambia County Supervisor of Elections website, did you review any Division of Elections' opinions relative to Section 106.143(3), Florida Statutes? ( ) Yes ( ) No. If yes, please list which opinions you reviewed.

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

EXHIBIT 5 (2 of 3)

17. What was the purpose of using the verbiage, "A lifelong Republican" as part of the "Candidate's Statement"?

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

18. When your "Candidate's Statement" was viewed in June 2018, the verbiage, "A lifelong Republican" was changed to read, "A lifelong conservative." Were you responsible for changing the verbiage from "A lifelong Republican" to "A lifelong conservative"? ( ) Yes ( ) No. If yes, please explain why it was changed.

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

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

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

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

\_\_\_\_\_  
**Signature of Notary Public - State of Florida**  
**Print, Type, or Stamp Commissioned Name of Notary Public**

Personally Known \_\_\_\_\_ or Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_  
\_\_\_\_\_

Case Investigator: KS


EXHIBIT 5 (363)

Select Language   
 Powered by Google Translate

**Candidate: Kells Hetherington**  
**Office: School Board, District 2**

List All Contributions and Expenditures

Show only financial reports (Hides bio)



**Contact Information:**  
 10335 Gulf Beach Hwy Apt 708  
 Pensacola, FL - 32507  
 kellsheterington@gmail.com  
 (202)431-0482

**Candidate's Statement**

My name is Kells Hetherington, I'm 39-years-old and my wife Allison and I own a home on Gulf Beach Highway in District 2. Here in Pensacola, I work in finance, building mathematical models and trading a portfolio of stocks, bonds and options. I have been trading successfully for over twenty years. On weekends you'll find me on my Sunfish sailing on Big Lagoon. A lifelong conservative, I was raised in the Congregational Church.

Prior to working full time in finance, I worked in Washington D.C for Fox News host Tucker Carlson, as Deputy Editor of his online news outlet, The Daily Caller. I also worked for the Voice of America. Earlier, I lived in Alaska for five years where I was General Manager of a public radio station in the Aleutian Islands. I graduated with a Bachelor of Science in Communications from Manhattanville College.

My greatest supporter is my lovely wife, Allison. She homeschools a student in Pensacola. When we first moved to Pensacola, she was a substitute teacher in Escambia County public schools. She has been an advocate for women with ovarian cancer for over a decade and is a board member of the Ovarian Cancer Research Fund Alliance. She's also actively involved with IMPACT 100 in Pensacola.

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 member.

**Note: The candidate's photograph and statement are supplied by the candidate and are not endorsed by the County Supervisor of Elections or checked for accuracy.**

**The following financial reports are available:**

Report	Monetary	In Kind	Expenditures	Print Report
View Transactions	Contributions	Contributions	and Distributions	
M4 (4/1/2018 - 4/30/2018)	\$0.00	\$0.00	\$0.00	
M5 (5/1/2018 - 5/31/2018)	\$3,350.00	\$0.00	\$2,362.12	

- Candidate qualifying forms and miscellaneous documents
- [Appointment\\_Form\\_for\\_Treasurer](#)
  - [Appointment\\_Form\\_for\\_Deputy\\_Treasurer](#)
  - [Statement\\_of\\_Candidate](#)
  - [Pre-File\\_Form](#)

EXHIBIT 6



REC'D: FL ELECTIONS COM  
29 MAR 19 AM 8:32

**AFFIDAVIT OF FILING OFFICER**  
Case Number: **FEC 18-133**

**STATE OF FLORIDA**  
**County of Escambia**

David H. Stafford, being duly sworn, says:

1. This affidavit is made upon my personal knowledge.
2. I am of legal age and competent to testify to the matters stated herein. I am currently employed by ESCAMBIA COUNTY as SUPERVISOR OF ELECTIONS.
3. Please provide copies of the listed items from the following candidate's campaign file: Kells Hetherington.

Check	ITEM
✓	The Statement of Candidate form for the 2018 campaign.
✓	Appointments of Treasurers and Designation of Campaign Depository form for the 2018 campaign.

4. Please check each item provided to the candidate and list the date that the item was provided.

Check	ITEM	DATE
✓	Chapter 106, Florida Statutes	4-27-18
✓	Candidate and Campaign Treasurer Handbook <u>Please Indicate Year.</u>	2018
✓	Other: <sup>1</sup> <u>LOCAL CANDIDATE HANDBOOK</u>	4/27/18

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

- Publications are given directly to the candidate.
- Publications are available in the office, candidates are advised to pick-up the publications for themselves.

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

EXHIBIT 7 (103)

Candidates are advised to download copies of the publications from our website or the Division of Elections' website.

Other, please explain. CD with documents

6. Does your office have any record of Kells Hetherington having sought elective office within your jurisdiction prior to the 2018 election?  Yes or  No. If yes, please list the previous office(s) he ran for, the date(s) of the election(s), and the result(s) of the election(s).

7. Did Mr. Hetherington win election to the School Board, District 2 during the 2018 election?  Yes  No.

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

9. Did you or any member from your staff have any conversations with Kells Hetherington relative to campaigning based on party affiliation?  Yes or  No. If yes, please indicate whether the conversation was in person, in writing, or by telephone and the subject matter of the conversation. If applicable, please provide copies documenting the discussion.

NO RECORD OF ANYTHING IN WRITING. NO RECOLLECTION OF ANY CONVERSATIONS.


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

[Handwritten Signature]  
Signature of Affiant

Sworn to (or affirmed) and subscribed before me this 28 day of March, 2019.

[Handwritten Signature: Keele A. Sekerka]  
Signature of Notary Public - State of Florida

Print, Type, or Stamp Commissioned Name of Notary Public

EXHIBIT 7 (2 of 3) 

Keele A. Sekerka  
NOTARY PUBLIC  
STATE OF FLORIDA  
Comm# FF241949  
Expires 8/21/2019



Personally Known  or Produced Identification \_\_\_\_\_  
Type of Identification Produced: \_\_\_\_\_

Case investigator: KS

EXHIBIT 7 (3 of 3)

**STATEMENT OF  
CANDIDATE**

(Section 106.023, F.S.)

(Please print or type)

OFFICE USE ONLY

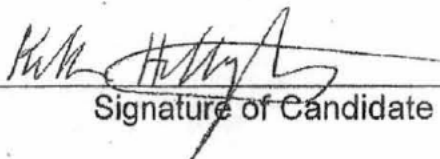
**COPY**

'18 APR 27 11:51am

I, Kells Hetherington

candidate for the office of Escambia County School Board (District 2) ;

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

X   
Signature of Candidate

April 27, 2018  
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)(e), 106.265(1), Florida Statutes).

EXHIBIT

8

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

**In Re: Kells Hetherington**

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**Case No.: FEC 18-133**

**STAFF RECOMMENDATION FOLLOWING INVESTIGATION**

Pursuant to Section 106.25(4)(c), Florida Statutes, undersigned staff counsel files this written recommendation for disposition of the sworn complaint in this case recommending that there is **probable cause** to charge Respondent with violating **Section 106.143(3), Florida Statutes**. Based upon a thorough review of the Report of Investigation submitted on May 1, 2019, the following facts and law support this staff recommendation:

1. On May 25, 2018, the Florida Elections Commission (“Commission”) received a sworn complaint from Michelle Salzman (“Complainant”), alleging that Kells Hetherington (“Respondent”) violated Chapter 106, Florida Statutes.

2. Respondent was a 2018 candidate for Escambia County School Board, District 2. Respondent’s Statement of Candidate form was filed on April 27, 2018. (ROI Exhibit 8)<sup>1</sup>

3. By letter dated July 25, 2018, the Executive Director notified Respondent that Commission staff would investigate the following statutory provision:

**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.

4. On April 27, 2018, Respondent acknowledged that he had been provided access to Chapter 106, Florida Statutes. (ROI Exhibit 8) 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*. (ROI Exhibit 7, page 1)

5. Complainant alleged that Respondent violated Florida’s election laws by campaigning based on party affiliation even though the office for which he was running was nonpartisan.

6. The race for Escambia County School Board, District 2 was a nonpartisan race. (ROI Exhibit 2, page 3). On June 22, 2018, Respondent filed a nonpartisan candidate oath. (ROI Exhibit 2, page 4)

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<sup>1</sup> The Report of Investigation is referred to herein as “ROI.”



7. Complainant provided a printout of Respondent's candidate statement from the Escambia County Supervisor of Elections' website. The statement contains the following language: "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." (ROI Exhibit 3) A more recent printout from the website shows a revised statement which changed the word "Republican" to "conservative." (ROI Exhibit 6)

8. Respondent stated that, "my biography can damn well say that I'm a life-long Republican. My First Amendment right to free speech is not abridged simply because I'm running in a nonpartisan race. The prohibition is on my campaigning as a Republican, which I have not done." (ROI Exhibit 4, page 1) He stated that a civil penalty has already been paid for the alleged infraction<sup>2</sup>, Commission staff's affidavit seeks to build a case on self-incrimination and lacks professionalism, and that legal remedies for intentional infliction of emotional distress are being considered by Respondent. (Attachment C) Respondent also stated that Complainant is stalking him, accuses Commission staff of leaking information to the Complainant, and threatened litigation. (Attachment D)

9. The Division of Elections' has issued multiple opinions interpreting this section of law. Opinion DE 03-02 provides that: (1) A candidate for nonpartisan municipal office is prohibited from campaigning based upon party affiliation; (2) information stating a nonpartisan candidate's political affiliation may not appear in the candidate's political advertisements; and (3) nonpartisan candidates may not publicly represent or advertise themselves as a member of any political party.

10. Opinion DE 10-02 provides that: (1) The Election Code does not define "campaigning," however, according to *Black's Law Dictionary*, it includes all acts done to bring about a candidate's election; and (2) a message by a candidate posted in a free forum (which would, therefore, not be considered a political advertisement) could, depending on the content of the message, constitute "campaigning" under Section 106.143(3), Florida Statutes.

11. The relevant statute at issue provides: "A political advertisement of a candidate running for nonpartisan office may not state the candidate's political party affiliation. . . . A candidate for nonpartisan office is prohibited from campaigning based on party affiliation." Respondent's candidate statement is not a political advertisement as it does not contain express advocacy. However, Respondent campaigned based on political party affiliation when he supplied a statement to be published on his filing officer's website that states that he is a Republican.

12. "Probable Cause" is defined as reasonable grounds of suspicion supported by circumstances sufficiently strong to warrant a cautious person in the belief that the person has

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<sup>2</sup> This case was eligible to be resolved through execution of a minor violation consent order and payment of a fine. Rule 2B-1.003(2)(j), F.A.C. Respondent initially accepted the minor violation consent order but thereafter filed a lawsuit against the Commission stating that the Commission "demanded that I give them [REDACTED]. . . This was done arbitrarily, before any 'investigation' and upon threat of a more significant fine if I did not agree to this amount. . . I'm . . . demanding a refund of the fine . . ." (Attachment A) Based upon Respondent's statements in his lawsuit, Commission staff determined that Respondent rejected the minor violation consent order and mailed the fine payment to Respondent per his request. (Attachment B)

committed the offense charged. *Schmitt v. State*, 590 So. 2d 404, 409 (Fla. 1991). Probable cause exists where the facts and circumstances, of which an [investigator] has reasonably trustworthy information, are sufficient in themselves for a reasonable man to reach the conclusion that an offense has been committed. *Department of Highway Safety and Motor Vehicles v. Favino*, 667 So. 2d 305, 309 (Fla. 1st DCA 1995).

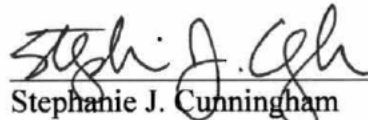
13. The facts set forth above show that Respondent was a 2018 candidate for Escambia County School Board, District 2. Respondent campaigned based on party affiliation even though the office for which he was running was nonpartisan.

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


**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.

Respectfully submitted on July 11, 2019.

  
Stephanie J. Cunningham  
Assistant General Counsel

I reviewed this Staff Recommendation this 11<sup>th</sup> day of July 2019.

  
Tim Vaccaro  
Executive Director

FILED

19 SEP -4 AM 11:33

STATE OF FLORIDA  
ELECTIONS COMMISSION

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**Florida Elections Commission,  
Petitioner,**

**Case No.: FEC 18-133**

**v.**

**Kells Hetherington,  
Respondent.**

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**ORDER OF PROBABLE CAUSE**

**THIS MATTER** was heard by the Florida Elections Commission (Commission) at its regularly scheduled meeting on August 13, 2019, in Tallahassee, Florida.

On July 11, 2019, Staff recommended to the Commission that there was probable cause to believe that the Florida Election Code was violated. The facts articulated in Staff's Recommendation are adopted by reference and incorporated herein. Based on the Complaint, Report of Investigation, Staff's Recommendation, and oral statements (if any) made at the probable cause hearing, the Commission finds that there is **probable cause** to charge Respondent with the following violation(s):

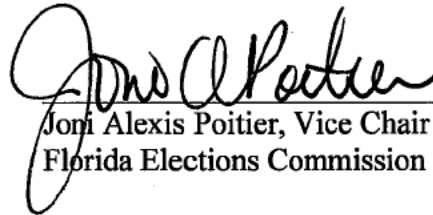
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**Count 1:**

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.

**DONE AND ORDERED** by the Florida Elections Commission on August 13, 2019.

  
Joni 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 A HEARING**

As the Respondent, you may elect to resolve this case in several ways. First, you may elect to resolve this case by consent order where you and Commission staff agree to resolve the violation(s) and agree to the amount of the fine. The consent order is then presented to the Commission for its approval. To discuss a consent order, contact the FEC attorney identified in the Order of Probable Cause.

Second, you may request an informal hearing held before the Commission, if you do not dispute any material fact in the Staff Recommendation. You have 30 days from the date the Order of Probable Cause is filed with the Commission to request such a hearing. The date this order was filed appears in the upper right-hand corner of the first page of the order. At the hearing, you will have the right to make written or oral arguments to the Commission concerning the legal issues related to the violation(s) and the potential fine. At the request of Respondent, the Commission will consider and determine willfulness at an informal hearing. Otherwise, live witness testimony is unnecessary.

Third, you may request a formal hearing held before an administrative law judge in the Division of Administrative Hearings (DOAH), if you dispute any material fact in the Staff Recommendation. You have 30 days from the date the Order of Probable Cause is filed with the Commission to request such a hearing. The date this order was filed appears in the upper right-hand corner of the first page of the order. At the hearing, you will have the right to present evidence relevant to the violation(s) listed in this order, to cross-examine opposing witnesses, to impeach any witness, and to rebut the evidence presented against you.

If you do not elect to resolve the case by consent order or request a formal hearing at the DOAH or an informal hearing before the Commission within 30 days of the date this Order of Probable Cause is filed with the Commission, the case will be sent to the Commission for a formal or informal hearing, depending on whether the facts are in dispute. The date this order was filed appears in the upper right-hand corner of the first page of the order.

To request a hearing, please send a written request to the Commission Clerk, Donna Ann Malphurs. The address of the Commission Clerk is 107 W. Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050. The telephone number is (850) 922-4539. The Clerk will provide you with a copy of Chapter 28-106, *Florida Administrative Code*, and other applicable rules upon request. No mediation is available.



EXHIBIT F

**STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION**

**Florida Elections Commission,  
Petitioner,**

v.

**Agency Case No.: FEC 18-133  
F.O. No.: FOFEC 19-299W**

**Kells Hetherington,  
Respondent.**

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**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.

**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 \$500.

Therefore, it is

**ORDERED** that Respondent shall remit a civil penalty in the amount of \$500, 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 November 19, 2019.



Jori 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.

**Timothy Vaccaro**

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**From:** Kells Hetherington <kellshetherington@gmail.com>  
**Sent:** Sunday, December 15, 2019 10:41 PM  
**To:** Timothy Vaccaro

Mr. Vaccaro –

As we discussed on a telephone call that you initiated on Monday, December 2, 2019, with several members of your staff present, including Stephanie Cunningham, the commission will revisit my political free-speech infraction at its next scheduled meeting in March 2020. As such, I have agreed to temporarily refrain from appealing in Circuit Court actions taken by the commission that are best described as revenge.

In September 2018, I paid a \$200 fine demanded by the FEC to settle a nebulous civil infraction. I then sued the commission as the state statute restricted my First Amendment right to political free speech. Angered by the lawsuit, commission employees Stephanie Cunningham and Eric Lipman launched an extensive investigation and recommended to the commission an additional \$500 fine – – – which the commission unanimously approved. In recommending the additional penalty, Stephanie Cunningham never mentioned the fact that the commission staff was still and continues to be in possession of the \$200 money order purchased from the US Post Office that I sent in September 2018.

The FEC staff wants us to believe that a lawsuit filed by me against the commission upended a consent agreement and gave them license to pursue a complete investigation. But at the same time, they refuse to apply other aspects of the Uniform Commercial Code to my situation, namely that a certified payment held beyond 90 days, constitutes accord and satisfaction, whether or not it is ever negotiated.

Clearly, the commission having held my payment now for 451 days and counting means there is accord and satisfaction, but despite that the commission continues to disparage me through the online publication of claims that the commission's own staff have determined to be without merit.

Not only is the FEC ignoring certain elements of the UCC in order to wage relentless revenge because I sued them, but they are forgetting that the Voluntary Payments Doctrine is not applicable here. When the state demands payment of a fine or a tax, the Rebuttal Presumption is always that payment is made under duress. As such, a lawsuit like the one that I filed against the FEC failed to change the *status quo*, and the original agreement that I signed with the commission stands unaffected.

If after the March 20 commission meeting, the commission remains intent on levying a fine against me merely because I exercised my constitutionally protected right to political free speech, and continues to maintain an online public record of false claims made against me, I will be forced to file suit against the commission and its staff.

Please direct all future communications to my personal email [kellshetherington@gmail.com](mailto:kellshetherington@gmail.com)

Sincerely yours, Kells Hetherington

**Kells Hetherington**

**Cell: (202) 431-0482**