STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

FLORIDA ELECTIONS COMMISSION,

Petitioner,

vs. Case No. 15-5994FEC

CONSERVE AND PROTECT FLORIDA'S SCENIC BEAUTY,

Respondent,
_____/

FINAL ORDER

A final hearing was conducted in this case on January 21, 2016, in Tallahassee, Florida, before E. Gary Early, an Administrative Law Judge with the Division of Administrative Hearings.

APPEARANCES

For Petitioner: Jaakan Ammiel Williams, Esquire
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Florida Elections Commission
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For Respondent: William David Brinton, Esquire[1/]
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STATEMENT OF THE ISSUES

The issues for disposition in this case are whether Respondent committed willful violations of section 106.07(7),

Florida Statutes (2014), when its campaign treasurer failed to notify the filing officer that Respondent had not received funds, made contributions, or expended reportable funds during four 2014 reporting periods; and, if so, whether Respondent is subject to civil penalties in view of the holding in PAC for Equality v. Department of State, Florida Elections Commission, 542 So. 2d 459 (Fla. 2d DCA 1989).

PRELIMINARY STATEMENT

On September 17, 2015, Petitioner, Florida Elections Commission (Commission), entered an Order of Probable Cause by which it charged Respondent, Conserve and Protect Florida's Scenic Beauty (Respondent), a political committee, with four counts of failing to timely notify the filing officer that no contribution and expenditure report would be filed because Respondent had not received funds, made contributions, or expended reportable funds during the identified reporting periods.

On October 16, 2015, Respondent filed a request for a formal hearing to contest the Order of Probable Cause. The request for hearing was referred to the Division of Administrative Hearings on October 21, 2015.

The final hearing was originally scheduled for December 11, 2015, was continued at the request of the parties until January 21, 2016, and was then held on that date.

After having filed a Joint Pre-hearing Stipulation, the parties filed an Amended Joint Pre-hearing Stipulation in which they identified stipulated facts for which no further proof would be necessary. The stipulated facts have been accepted and considered in the preparation of this Recommended Order.

At the final hearing, Petitioner presented no witnesses, relying on unopposed affidavits of Kristi Reid Bronson, Chief of the Bureau of Election Records of the Division of Elections; John R. Crescimbeni, Respondent's treasurer; and William D. Brinton, Respondent's chairperson. The affidavits, identified as Petitioner's Exhibits 1 through 3, were received in evidence without objection.

Respondent presented the testimony of Mr. Brinton and Mr. Crescimbeni, and offered Respondent's Exhibits 1 through 14, which were received in evidence without objection. Respondent's Exhibits 5 and 6 consisted of the affidavits of Mr. Crescimbeni and Mr. Brinton that had been introduced as Petitioner's Exhibits 2 and 3, but included the attachments referenced therein. Mr. Crescimbeni and Mr. Brinton ratified and adopted their affidavits under oath, and each has been accepted as though the statements were delivered by live testimony.

On February 24, 2016, the parties filed a Joint Stipulation as to 2014 Reporting Dates, which included a 2014 Calendar of Reporting Dates for Political Committees/Independent

Expenditure-Only Organizations that file with the Division of Elections. The 2014 Calendar is accepted in evidence, and designated as Joint Exhibit 1.[2/] Although the calendar is hearsay, it supplements and explains other non-hearsay evidence regarding the 2014 reporting dates.

A one-volume Transcript of the hearing was filed on February 10, 2015. Post-hearing submittals were to be filed 10 days from the filing of the Transcript. Two unopposed motions to extend the filing deadline were granted, which served to extend the filing deadline to February 29, 2016.

Petitioner timely filed its Proposed Final Order. Respondent, having experienced difficulties in scanning and uploading its completed Proposed Final Order, filed it at 5:08 p.m. on February 29, 2016, technically eight minutes late, but resulting in an "official" filing at 8:00 a.m. on March 1, 2016. Respondent subsequently filed an Unopposed Verified Amended Motion Requesting Relief by Order Under Rule 28-106.211, F.A.C., Conduct of Proceedings, requesting consideration of its late-filed Proposed Final Order. That Motion is hereby granted, and the Proposed Final Orders filed by each of the parties have been considered in the preparation of this Final Order.

Respondent's Proposed Final Order was 42 pages in length, thus exceeding the 40-page limit established in Florida Administrative Code Rule 28-106.215. Petitioner did not object,

and there being no discerned prejudice to any party, Respondent's Proposed Final Order is accepted as filed.

This proceeding is governed by the law in effect at the time of the commission of the acts alleged to constitute a violation of law. See McCloskey v. Dep't of Fin. Servs., 115 So. 3d 441 (Fla. 5th DCA 2013). Thus, references to statutes are to Florida Statutes (2014), unless otherwise noted.

FINDINGS OF FACT

1. Petitioner is the entity responsible for investigating complaints and enforcing Florida's election and campaign financing laws, chapters 104 and 106, Florida Statutes. § 106.25, Fla. Stat.

2. Respondent is a political committee organized for the purpose of sponsoring and supporting a constitutional initiative to conserve and protect Florida's scenic beauty, which is primarily directed to restrictions on billboards along Florida highways. Respondent has been a registered political committee since 2002.

3. Prior to 2014, Respondent suspended its campaign to gather petitions to place the constitutional initiative on the ballot. Respondent has not abandoned the campaign, and the initiative remains legally active.

4. Prior to 2014, Respondent's most recent financial activity was an expenditure of $61.25 in the first quarter of 2011.

5. Respondent's assets during 2014 consisted of $157.50 held in a bank account. There were no contributions received or expenditures made by Respondent during the times pertinent to this proceeding.

6. Respondent's treasurer is Mr. Crescimbeni. Mr. Crescimbeni acknowledged his responsibility as treasurer to accurately report to the Division of Elections the contributions received and expenditures made by Respondent, and the dates of each.

7. The reporting requirements were contained in a political committee handbook and copy of the Florida statutes that are provided by Petitioner to all political committees. Mr. Crescimbeni acknowledged having received and read both documents.

8. Although some reporting requirements have changed since Mr. Crescimbeni's receipt of the political committee handbook, Mr. Crescimbeni believed that he understood the reporting requirements.

9. Mr. Crescimbeni understood that, since Respondent neither received contributions nor made expenditures, the requirement to submit a treasurer's report was statutorily

waived, though there was a requirement to notify the filing officer that a report was not being filed.

10. In 2013, section 106.07 was amended, creating 33 reporting periods for calendar year 2014, significantly more than existed prior to the amendments. Ch. 2013-37, § 9, Laws of Fla.[3/]

11. Reports for the 33 reporting periods in 2014 were statutorily waived pursuant to section 107.07(7), inasmuch as there were no contributions or expenditures.

12. Notifications of no activity were filed for each of the 33 reporting periods in 2014, all of which were timely, except the four identified in the Order of Probable Cause.

The M5 Filing Period

13. The notification of no activity for the 2014 M5 reporting period of May 1 through May 31, 2014, was due by midnight on June 10, 2014. The notification of no activity for the 2014 M5 reporting period was filed on Saturday, June 14, 2014, at 11:50:59 a.m.

14. On the morning of Saturday, June 14, 2014, Mr. Crescimbeni picked up Respondent's mail from the post office. He then traveled to his office, where he opened the mail. Among the items received was a notice from the Division of Elections advising Respondent that its M5 report had not been

received by the filing deadline. The letter was dated June 11, 2014, and bore a postmark of June 12, 2014.

15. When Mr. Crescimbeni realized his error, he immediately uploaded the report of no activity at 11:50 a.m. on the morning of June 14, 2014.

16. Mr. Crescimbeni testified credibly that "[m]y delayed filing of the M5 notification of no activity was neither deliberate nor a repeated failure. It was simply an oversight and nothing more."

The P1 Report

17. The notification of no activity for the 2014 P1 reporting period of June 1 through June 20, 2014, was due by midnight on Friday, June 27, 2014. The notification was filed on Saturday, June 28, 2014, at 9:34:11 a.m. The notification was filed without any form of notification from Petitioner.

18. Mr. Crescimbeni indicated that the late filing of the PI notification of no activity, which occurred within hours of the time due, was not deliberate, and was unintentional and an oversight.

The G1 Report

19. The notification of no activity for the 2014 G1 reporting period of August 23 through 29, 2014, was due by midnight on Friday, September 5, 2014. The notification was filed on Saturday, September 6, 2014, at 3:52:33 a.m. The

notification was filed without any form of notification from Petitioner.

20. Mr. Crescimbeni indicated that the late filing of the GI notification of no activity, which occurred within hours of the time due, was not deliberate, and was unintentional and an oversight.

The D2 Report

21. The notification of no activity for the 2014 D2 reporting period of October 25, 2014, was due by midnight on Sunday, October 26, 2014. The notification was filed on Monday, October 27, 2014, at 10:12:15 a.m. The notification was filed without any form of notification from Petitioner.

22. Mr. Crescimbeni indicated that the late filing of the D2 notification of no activity, which occurred within hours of the time due, was not deliberate, and was unintentional and an oversight.

23. As to each of the four notifications of no activity referenced above, Mr. Crescimbeni credibly testified that the delay was:

> [T]he result of my temporary inattention and each such delay was a simple and inadvertent omission on my part that was promptly remedied . . . . I was never indifferent to the required filings of notifications of no activity. Each such delay by me in making such filing of said notification was not intentional. Each such delay was not deliberate, purposeful, or with any intent

> or consciousness on my part to avoid the notification of "no" activity.

Mr. Crescimbeni' testimony is accepted.

24. There was no evidence adduced at the hearing suggesting there to have been any financial or political advantage or benefit that could reasonably be derived from the late filing of the four notifications of no activity referenced above.

25. The Commission does not investigate willfulness and does not make a finding of willfulness until after the determination of probable cause in a Probable Cause Hearing.

CONCLUSIONS OF LAW

26. The Division of Administrative Hearings has jurisdiction of the subject matter and the parties to this proceeding. §§ 106.25(5), 120.569, and 120.57(1), Fla. Stat. (2015).

Burden of Proof

27. The Commission must establish the elements of the alleged violations by clear and convincing evidence. Diaz de la Portilla v. Fla. Elec. Comm'n, 857 So. 2d 913, 917 (Fla. 3d DCA 2003), rev. den., 872 So. 2d 899 (Fla. 2004); see also Dep't of Banking & Fin. v. Osborne Stern and Co., 670 So. 2d 932, 935 (Fla. 1996); Latham v. Comm'n on Ethics, 694 So. 2d 83, 84-86 (Fla. 1st DCA 1997).

28. Clear and convincing evidence "requires more proof than a 'preponderance of the evidence' but less than 'beyond and to the exclusion of a reasonable doubt.'" In re Graziano, 696 So. 2d 744, 753 (Fla. 1997). The clear and convincing evidence level of proof:

> [E]ntails both a qualitative and quantitative standard. The evidence must be credible; the memories of the witnesses must be clear and without confusion; and the sum total of the evidence must be of sufficient weight to convince the trier of fact without hesitancy.
>
> > Clear and convincing evidence requires that the evidence must be found to be credible; the facts to which the witnesses testify must be distinctly remembered; the testimony must be precise and explicit and the witnesses must be lacking in confusion as to the facts in issue. The evidence must be of such weight that it produces in the mind of the trier of fact a firm belief or conviction, without hesitancy, as to the truth of the allegations sought to be established.

In re Davey, 645 So. 2d 398, 404 (Fla. 1994) (quoting, with approval, Slomowitz v. Walker, 429 So. 2d 797, 800 (Fla. 4th DCA 1983)); see also In re Henson, 913 So. 2d 579, 590 (Fla. 2005). "Although [the clear and convincing] standard of proof may be met where the evidence is in conflict, it seems to preclude evidence that is ambiguous." Westinghouse Elec. Corp. v. Shuler Bros., 590 So. 2d 986, 989 (Fla. 1st DCA 1991).

Statutory Standards

29. Section 106.011(16)(a) defines a "political committee" to include "[t]he sponsor of a proposed constitutional amendment by initiative who intends to seek the signatures of registered electors." Respondent is a political committee.

30. Section 106.07 provides, in pertinent part, that:

> (1) Each campaign treasurer designated by a candidate or political committee pursuant to s. 106.021 shall file regular reports of all contributions received, and all expenditures made, by or on behalf of such candidate or political committee . . . . Monthly reports shall include all contributions received and expenditures made during the calendar month which have not otherwise been reported pursuant to this section.
>
> (7) Notwithstanding any other provisions of this chapter, in any reporting period during which a candidate or political committee has not received funds, made any contributions, or expended any reportable funds, the filing of the required report for that period is waived. However, the next report filed must specify that the report covers the entire period between the last submitted report and the report being filed, and any candidate or political committee not reporting by virtue of this subsection on dates prescribed elsewhere in this chapter shall notify the filing officer in writing on the prescribed reporting date that no report is being filed on that date.

31. Section 106.25(3), in its current form, provides that:

> For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this

> chapter or chapter 104. The commission may not by rule determine what constitutes willfulness or further define the term "willful" for purposes of this chapter or chapter 104. Willfulness is a determination of fact; however, at the request of the respondent at any time after probable cause is found, willfulness may be considered and determined in an informal hearing before the commission.

The "Willfulness" Standard

32. Prior to 2007, section 106.25(3) provided, in its entirety, that:

> For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104.

33. As it existed prior to 2007, section 106.37 provided that:

> A person willfully violates a provision of this chapter if the person commits an act while knowing that, or showing reckless disregard for whether, the act is prohibited under this chapter, or does not commit an act while knowing that, or showing reckless disregard for whether, the act is required under this chapter. A person knows that an act is prohibited or required if the person is aware of the provision of this chapter which prohibits or requires the act, understands the meaning of that provision, and performs the act that is prohibited or fails to perform the act that is required. A person shows reckless disregard for whether an act is prohibited or required under this chapter if the person wholly disregards the law without making any reasonable effort to determine whether the

> act would constitute a violation of this chapter.

34. In construing section 106.25(3) as it existed prior to 2007, the Commission relied on the section 106.37 definition of "willful violations" to establish the bases for violations of both chapter 104 and chapter 106. See Fla. Elec. Comm'n v. John J. Fugate, Case No. 04-1178 (DOAH Dec. 22, 2004; FEC June 3, 2005) ("Thus, the Commission, consistent with its past holdings, again holds that Section 106.37, Florida Statutes, applies to alleged violations of Chapter 104, Florida Statutes.").

35. The First District Court of Appeal disagreed with the Commission's construction of the scope of section 106.37 as applying to violations of chapter 104, ruling that:

> [T]he Commission erred by rejecting the ALJ's correct conclusion that section 106.37, Florida Statutes (2003), is inapplicable to alleged violations of Chapter 104 and by applying the definition of "willful" set forth in 106.37 to appellant's alleged violation of section 104.31(1)(a).

Fugate v. Fla. Elec. Comm'n, 924 So. 2d 74, 76 (Fla. 1st DCA 2006). The Fugate court also invited the Commission to "promulgate by rule a definition of 'willful' to be applied to alleged violations of Chapter 104."

36. On September 11, 2006, the Commission promulgated Florida Administrative Code Rule 2B-1.002, which created the following definition of "willful":

> For purposes of imposing a civil penalty for violating Chapter 104, F.S, the following definitions shall apply:
>
> (1) A person acts "willful" or "willfully" when he or she showed reckless disregard for whether his or her conduct was prohibited or required by Chapter 104, F.S.
>
> (2) "Knew" means that the person was aware of a provision of Chapter 104, F.S., understood the meaning of the provision, and then performed an act prohibited by the provision or failed to perform an act required by the provision.
>
> (3) "Reckless disregard" means that the person disregarded the requirements of Chapter 104, F.S., or was plainly indifferent to its requirements, by failing to make any reasonable effort to determine whether his or her acts were prohibited by Chapter 104, F.S., or whether he or she failed to perform an act required by Chapter 104, F.S.

37. In 2007, the Florida Legislature repealed section 106.37. Ch. 2007-30, § 51, Laws of Fla. During that same session, the Legislature amended section 106.25(3) as follows:

> For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104. <u>Willfulness is a determination of fact; however, at the request of the respondent, willfulness may</u>

> be considered and determined in an informal hearing before the commission.

Ch. 2007-30, § 48, Laws of Fla.

38. Chapter 2007-30, Laws of Florida, was signed into law on May 21, 2007. By its terms, it became effective on January 1, 2008.

39. On December 25, 2007, one week before the effective date of chapter 2007-30, Laws of Florida, the Commission amended rule 2B-1.002 as follows:

> For purposes of imposing a civil penalty for violating Chapter 104 or 106, F.S., the following definitions shall apply:
>
> (1) A person acts "willful" or "willfully" when he or she knew that, or showed reckless disregard for whether his or her conduct was prohibited or required by Chapter 104 or 106, F.S.
>
> (2) "Knew" means that the person was aware of a provision of Chapter 104 or 106, F.S., understood the meaning of the provision, and then performed an act prohibited by the provision or failed to perform an act required by the provision.
>
> (3) "Reckless disregard" means that the person disregarded the requirements of Chapter 104 or 106, F.S., or was plainly indifferent to its requirements, by failing to make any reasonable effort to determine whether his or her acts were prohibited by Chapter 104 or 106, F.S., or whether he or she failed to perform an act required by Chapter 104 or 106, F.S.

40. Rule 2B-1.002 survived a challenge to the Commission's authority to promulgate the rule. Fla. Elec. Comm'n v. Blair,

52 So. 3d 9 (Fla. 1st DCA 2010). In its opinion, the court held that:

> [W]e do not construe the repeal of section 106.37 and the amendments to section 106.25(3) as either a legislative prohibition against the adoption of a definition of "willful" by rule or an indication of a legislative preference that there not be a uniform standard against which alleged violations of chapter 106 would be judged . . . . Moreover, in light of the clear, long-standing legislative preference that agency policies be expressed in rules, it seems unlikely that the Legislature would have intended that the legal definition of "willful" be developed through adjudication.

Id. at 15.

41. In 2011, the Florida Legislature prohibited the Commission from adopting a definition of "willful" by rule, amending section 106.25(3) as follows:

> (3) For the purposes of commission jurisdiction, a violation shall mean the willful performance of an act prohibited by this chapter or chapter 104 or the willful failure to perform an act required by this chapter or chapter 104. The commission may not by rule determine what constitutes willfulness or further define the term "willful" for purposes of this chapter or chapter 104. Willfulness is a determination of fact; however, at the request of the respondent at any time after probable cause is found, willfulness may be considered and
>
> determined in an informal hearing before the commission.

Ch. 2011-40, § 70, Laws of Fla.

42. On June 2, 2013, the Commission repealed rule 2B-1.002.

43. It is clear from the foregoing that a "willful failure" to comply with the campaign financing law must be more than a "failure" to comply with the campaign financing law. The repeal of section 106.37, along with subsequent enactments designed to supersede the regulatory definitions in rule 2B-1.002, is persuasive evidence that something more than an awareness and understanding of the campaign financing law, and a subsequent failure to perform some required act, is necessary to prove a violation.

44. Based on the foregoing history, the construction to be applied to the term "willful" for purposes of the campaign financing law is best established by Fugate v. Florida Elections Commission, 924 So. 2d at 75, which serves to:

> define a willful act as one that is voluntarily and intentionally performed with specific intent and bad purpose to violate or disregard the requirements of the law.

Id. at 75[4/]; see also Sanders v. Fla. Elec. Comm'n, 407 So. 2d 1069, 1070 (Fla 4th DCA 1981) ("A careless and negligent failure to comply with [the campaign financing law] does not constitute a 'willful' violation as required by the statute.").

45. Based on the Findings of Fact herein, the Commission failed to prove, clearly and convincingly, that Respondent

voluntarily and intentionally, and with specific intent and bad purpose to violate or disregard the requirements of the law, failed to notify the filing officer in writing on the prescribed reporting date that no report of contributions and expenditures was being filed on that date. Thus, the Commission failed to establish that Respondent willfully violated section 106.07(7).[5/]

46. Given the findings and conclusions in this case, it is unnecessary to reach the issue of whether civil penalties for a failure to timely file a notification of no activity under section 106.07(7) is authorized under PAC for Equality v. Florida Elections Commission, 542 So. 2d 459 (Fla. 2d DCA 1989).

ORDER

Based upon the foregoing Findings of Fact and Conclusions of Law, it is ORDERED that the Order of Probable Cause entered against Conserve and Protect Florida's Scenic Beauty, FEC 15-164, is DISMISSED.

DONE AND ORDERED this 22nd day of March, 2016, in Tallahassee, Leon County, Florida.

E. GARY EARLY
Administrative Law Judge
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Filed with the Clerk of the
Division of Administrative Hearings
this 22nd day of March, 2016.

ENDNOTES

[1/] Mr. Brinton is a member of the Florida Bar and registered with eALJ as "William David Brinton, Esquire". However, Mr. Brinton appeared as Respondent's Chairperson and qualified representative and not as Respondent's attorney, and was accepted as such.

[2/] In the lexicon of the Commission, "M" reports are monthly reports filed before the requirement to file weekly primary and general election period reports and after the general election has been held, "P" reports are weekly primary election reports, "G" reports are weekly general election reports, and "D" reports are daily reports.

[3/] The 2013 amendment revised section 106.07(1) to require monthly, rather than quarterly, contribution and expenditure reports; to replace seven primary and general election reports (filed on the 32nd, 18th, and 4th days immediately preceding the primary and on the 46th, 32nd, 18th, and 4th days immediately preceding the general election) with 19 weekly reports (to commence 60 days before the primary, with the last weekly report due on the 4th day preceding the general election); and to require six daily reports starting on the 10th day and going through the 5th day prior to the general election.

[4/] The First District Court of Appeal specifically acknowledged Administrative Law Judge Lawrence Stevenson's analysis of the willfulness standard as reasonable. His analysis included the following:

> The determination of "willfulness" is a question of fact. McGann v. Florida Elections Commission, 803 So. 2d 763, 764 (Fla. 2001). For purposes of this case, the term "willful," as used in Subsection 106.25(3), Florida Statutes (2003), is essentially an undefined term. In Metropolitan Dade County v. Department of Environmental Protection, 714 So. 2d 512, 516 (Fla. 3d DCA 1998), the court faced the question of interpreting the undefined statutory term "willful violation" and reasoned as follows:
>
> > In construing an undefined term, we must look to the common or usual meaning of the term. State Dept. of Administration v. Moore, 524 So. 2d 704 (Fla. 1st DCA 1988) . . . The court in [Thunderbird Drive-In Theatre, Inc. v. Reed, 571 So. 2d 1341, 1344 (Fla. 4th DCA 1990] relied on W. Page Keeton, et al., Prosser & Keeton Handbook of the Law of Torts § 34, at 213 (5th ed. 1984), in concluding that the usual meaning assigned to "willful" "[i]s that the actor has intentionally done an act of an unreasonable character in disregard of a known or obvious risk that was so great as to make it highly probable that harm would follow . . ." Thus, the Thunderbird Drive-In court concluded that when the legislature uses the word "willful" in a statute it demonstrates the legislature's intention that the actor possess "more than mere knowledge or awareness" for the statute to be applicable . . . . The Thunderbird Drive-In definition is not an unusual

> or extraordinary interpretation of the term "willful."
>
> Black's Law Dictionary defines "willful" as:
>
> > An act or omission is 'willfully' done, if done voluntarily and intentionally and with the specific intent to do something the law forbids, or with the specific intent to fail to do something the law requires to be done; that is to say, with bad purpose either to disobey or to disregard the law.
>
> Black's Law Dictionary 1434 (5th ed. 1979) (same definition at 1599 (6th ed. 1990)). This definition mirrors the Thunderbird Drive-In definition. Other courts have ascribed to a similar definition of "willful violation." In Hazen Paper Co. v. Biggins, 507 U.S. 604, 617, 113 S.Ct. 1701, 123 L.Ed.2d 338 (1993), the Supreme Court determined that a "willful" violation, as the term is used in federal statutes, requires a showing that the actor "either knew or showed reckless disregard for the matter of whether its conduct was prohibited. . . ." This definition conveys the same idea that the act be intentional and accompanied by the actor's intent and purpose that the prohibited conduct take place." (Some citations omitted).

Florida Elec. Comm'n v. John J. Fugate, Case No. 04-1178, ¶ 25 (Fla. DOAH Dec. 22, 2004; FEC FO after Remand June 26, 2006).

Judge Stevenson concluded that, in order for the Commission to prove a violation of the election code, it must demonstrate that the alleged violator "acted 'with bad purpose either to disobey or to disregard the law,' or that it was his 'intent and purpose that the prohibited conduct take place.'" Id. at ¶ 28.

[5/] The undersigned recognizes that in some cases there may be a paucity of direct evidence of willful intent, but substantial circumstantial evidence. In such cases, willfulness may be inferred from the totality of the facts in a given case. See Lear v. Lear, 95 So. 2d 519, 521 (Fla. 1957) ("This inference so dignified, considered in connection with the evidence as a whole, gives rise to the further inference that such desertion was willful and obstinate, ... Such reasonable inference preponderates over all other reasonable inferences."); J.D.J. v. State, 120 So. 3d 229, 231 (Fla. 4th DCA 2013) ("Circumstantial evidence may form a sufficient basis to demonstrate the necessary intent. In certain cases, this means that the action which leads to the finding of contempt may itself infer willfulness . . . . We held that in such circumstances, it is proper to infer the intent to obstruct the administration of justice and find willfulness.") (citations omitted); Odom v. Unemplmt. App. Comm'n, 586 So. 2d 504, 507 (Fla. 5th DCA 1991)(Sharp, J., dissenting) ("An inference of willfulness and culpability may be based on an employee's grossly defective performance, or on a performance so fraught with errors that the fact-finder concludes they were intentional. However, this is primarily a determination for the fact-finder."); Schwartz v. Zippy Mart, Inc., 470 So. 2d 720, 725 (Fla. 1st DCA 1985) (Wentworth, J, specially concurring) ("The complaints against Zippy Mart are phrased in terms normally associated with negligence claims. The complaints do not specifically allege, and the record does not otherwise indicate, any intentional tort or conduct on the part of Zippy Mart which might support a finding of willful intent . . . [but] I perceive no legislative intent to shield employers . . . based on employer conduct which might inferentially support a finding of willful intent."); Smith v. Fortune Ins. Co., 404 So. 2d 821, 823 (Fla. 1st DCA 1981) (A prior statement of a young woman accused of setting a fire in the family home, along with the potential for financial gain from the payment of insurance proceeds and other arguably incriminating acts, "constituted substantive evidence that she started the fire, upon which the jury could base an inference that she did so willfully and maliciously.").

In a proceeding regarding alleged violations of the election code or campaign financing law, circumstantial evidence, which could include some demonstrable financial or political gain from the failure to comply with the "who gave it, who got it" law, could rise to the level to which an inference of willful conduct could be derived. In addition, evidence of serial non-compliance might, under the proper circumstances, support an

inference of willfulness. See, e.g., Fla. Elec. Comm'n v. Justice-2-Jesus, Case No. 15-5995FEC (DOAH Jan. 28, 2016).

Evidence sufficient to support an inference of willfulness does not exist in this case.

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NOTICE OF RIGHT TO JUDICIAL REVIEW

A party who is adversely affected by this Final Order is entitled to judicial review pursuant to Section 120.68, Florida Statutes. Review proceedings are governed by the Florida Rules of Appellate Procedure. Such proceedings are commenced by filing one copy of a Notice of Administrative Appeal with the agency clerk of the Division of Administrative Hearings and a second copy, accompanied by filing fees prescribed by law, with the District Court of Appeal, First District, or with the District Court of Appeal in the appellate district where the party resides. The Notice of Administrative Appeal must be filed within 30 days of rendition of the order to be reviewed.