2009 WL 1914723 (Fla.Div.Admin.Hrgs.)

Division of Administrative Hearings

State of Florida

FLORIDA ELECTIONS COMMISSION, Petitioner
v.
SUSAN VALLIERE, Respondent

Case No. 08-0138

FLORIDA ELECTIONS COMMISSION, Petitioner
v.
A. JAMES VALLIERE, Respondent

Case No. 08-0140
July 1, 2009

FINAL ORDER

***1** Robert E. Meale, Administrative Law Judge of the Division of Administrative Hearings, conducted the final hearing in Stuart, Florida, on January 12-16, 2009.

APPEARANCES

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Stuart, Florida 34996

STATEMENT OF THE ISSUES

The issues are whether either Respondent committed violations of Chapter 106, Florida Statutes, and, if so, what penalties should be imposed.

PRELIMINARY STATEMENT

By Order of Probable Cause entered November 30, 2007, Petitioner found probable cause that Respondent Susan Valliere (Ms. Valliere) committed 28 violations of Chapter 106, Florida Statutes.

Count 1 alleges that, on July 26, 2006, Ms. Valliere violated Section 106.07(5), Florida Statutes, by failing to certify the correctness of the amended campaign treasurer's report for 2006 Q2. Count 2 alleges that, on August 31, 2006, Ms. Valliere violated Section 106.07(5), Florida Statutes, by failing to certify the correctness of the campaign treasurer's report for 2006 F3.

Counts 3-28 allege violations of Section 106.19(1)(a), Florida Statutes, when Ms. Valliere accepted 26 contributions in excess of the legal limit by accepting specifically identified contributions on given dates from the Citizens Committee of Martin County (CCMC) in the form of its payments to third parties. For example, Count 3 alleges that, on April 10, 2006, Ms. Valliere accepted an in-kind contribution of $1166.41 from CCMC, which paid this sum by check to Ampersand Graphics.

By Order of Probable Cause entered November 30, 2007, Petitioner found probable cause that Respondent A. James Valliere (Mr. Valliere) committed 83 violations of Chapter 106, Florida Statutes.

Count 1 alleges that, on September 6, 2006, Mr. Valliere violated Section 106.07(5), Florida Statutes, by certifying to the correctness of CCMC's campaign treasurer's report for F3 2006 when it omitted a $1325 expenditure to Ampersand Graphics and a $689 expenditure to Craig's Design. Count 2 alleges that, on September 25, 2006, Respondent violated Section 106.07(5), Florida Statutes, by certifying to the correctness of CCMC's campaign treasurer's report for G1 2006 when it incorrectly reported an expenditure of $464.30 to Peggy Hart for the Reimbursement Rally and omitted the full name and address of each person to whom the expenditure was made with the amount, date, and purpose of the expenditure.

***2** Counts 3-28 allege violations of Section 106.08(1), Florida Statutes, when Mr. Valliere made contributions in excess of $500 per election by making in-kind contributions to Ms. Valliere's campaign from CCMC to third parties. For example, Count 3 alleges that, on April 10, 2006, Mr. Valliere made a contribution in excess of $500 per election when he made an in-kind contribution of $1166.41 from CCMC to Ms. Valliere's campaign when CCMC paid this sum to Ampersand Graphics.

Counts 29-54 allege violations of Section 106.19(1)(a), Florida Statutes, when Mr. Valliere accepted in-kind contributions in excess of the legal limit when, on behalf of Ms. Valliere's campaign, he accepted in-kind contributions from CCMC when it paid third parties. For example, Count 29 alleges that, on April 10, 2006, Mr. Valliere accepted a contribution in excess of the legal limit when he accepted an in-kind contribution of $1166.41 from CCMC for the campaign when CCMC paid this sum to Ampersand Graphics.

Counts 55-80 allege violations of Section 106.19(1)(b), Florida Statutes, when, on behalf of Ms. Valliere's campaign, Mr. Valliere failed to report contributions when he accepted in-kind contributions from CCMC when it paid third parties. For example, Count 55 alleges that, on April 10, 2006, Mr. Valliere accepted a contribution required to be reported

when he accepted an in-kind contribution of $1166.41 from CCMC for the campaign when CCMC paid this sum to Ampersand Graphics.

Count 81 alleges that, in July 2006, Mr. Valliere violated Section 106.143(1)(b), Florida Statutes, when he published a political advertisement for CCMC without identifying the address of the sponsor. Count 82 alleges that, in July 2006, Mr. Valliere violated Section 106.143(1)(b), Florida Statutes, when he published a political advertisement for CCMC without identifying the address of the sponsor.

Count 83 alleges that, on May 13, 2005, Mr. Valliere violated Section 106.19(1)(c), Florida Statutes, by falsely reporting on CCMC's Statement of Organization of Political Committee that Robert Lennon was a member of the committee.

Respondents filed motions to dismiss based on amendments to Section 106.25(2), Florida Statutes, and a claim of a resulting lack of jurisdiction by Petitioner to investigate these matters. On February 6, 2008, the Administrative Law Judge issued a detailed order, which granted the motion to dismiss Counts 2 and 81-83 against Mr. Valliere.

By Order of Consolidation entered January 22, 2008, the Administrative Law Judge consolidated the two cases.

At the hearing, Petitioner called 11 witnesses, Mr. Valliere called 10 witnesses, and Ms. Valliere called no witnesses. The exhibits were admitted as shown in the transcript.

The court reporter filed the Transcript on February 11, 2009. The parties filed proposed final orders on March 18, 2009.

FINDINGS OF FACT

1. Ms. Valliere is a county commissioner for Martin County. She was first elected in the fall of 2002 and re-elected in the fall of 2006. The case against her involves the primary campaign for the 2006 election, which was held on September 5, 2006. She won this race and faced no opposition in the general election.

***3** 2. Mr. Valliere is the husband of Ms. Valliere. He has a law degree from the University of Chicago. After graduating from law school, he worked as a patent lawyer in Chicago for 15-20 years before joining a private company in Iowa engaged in the manufacture of computer products. Mr. Valliere served for several years as vice-president and general counsel of this small company. He is not a member of The Florida Bar and no longer practices law.

3. In 1988, Mr. and Ms. Valliere, who had been working as a paralegal for the same Iowa computer-product manufacturer, moved to Stuart, combining their families from previous marriages. Mr. Valliere essentially retired, although he attended to some personal litigation after arriving in Florida. Ms. Valliere raised the children and assisted Mr. Valliere in the litigation with which he was involved. As the children aged, Ms. Valliere set up a small business, with which Mr. Valliere assisted.

4. After the children had grown, Ms. Valliere entered local politics, running for a seat on the county commission in 2002. She and her husband had no prior experience in these matters, but Ms. Valliere drew on community support to aid in her effort, and she successfully unseated the incumbent. For two months during the summer of 2002, Ms. Valliere served as the treasurer of her campaign, but she eventually found someone else to assume these duties, although their official roles remained, respectively, treasurer and deputy treasurer.

5. In October 2002, due to problems with their relationship, Ms. Valliere began to live apart from Mr. Valliere, although they are still married. After this separation, persons initiated litigation concerning Ms. Valliere's actual residence, and she formed a trust to fund her legal costs in defending the litigation. In connection with this defense, Ms. Valliere retained local attorneys, Virginia Sherlock and Howard Heims. Approximately 250 supporters contributed $20,000 to $25,000

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to Ms. Valliere's legal-defense fund, which was administered by three trustees, none of whom was Mr. Valliere. During the course of the litigation, Mr. Valliere voluntarily performed legal research for use by Ms. Sherlock, with whom he met frequently to discuss the case.

6. Ms. Valliere prevailed in the residency litigation, and she later prevailed in an abuse-of-process action against the persons who had initiated the earlier litigation. This resulted in a cash settlement in May 2005. Ms. Valliere was prepared to return the funds to the 250 contributors to the legal-defense fund, but Mr. Valliere saw this as an opportunity to fund Ms. Valliere's re-election campaign.

7. Ms. Valliere was unsure whether she would run for reelection, but did not stop Mr. Valliere from soliciting the contributors to her legal-defense fund. However, she secured his promise that, if she did not run for re-election, Mr. Valliere would return all of the money.

8. In May 2005, Mr. Valliere formed the political committee, CCMC. Mr. Valliere then contacted the contributors to the legal-defense fund, and 150 of them agreed to allow their contributions to be transferred to CCMC. After this, CCMC received small amounts of money until Mr. Valliere actively solicited funds. Overall, CCMC raised and spent about $34,000, as compared to about $86,000 raised and spent by Ms. Valliere's political campaign.

***4** 9. Mr. Valliere appointed himself as the chair and treasurer of CCMC, whose sole purpose was to promote the re election of Ms. Valliere in the 2006 election. He also named a finance committee, which never met. For all purposes, Mr. Valliere was the sole means through which CCMC acted; he raised funds, completed and filed reports, and made arrangements with vendors for the production of campaign products. About the only thing that Mr. Valliere did not do for CCMC was computer design work.

10. In September 2005, tension emerged between Mr. and Ms. Valliere concerning CCMC and Ms. Valliere's plans. As Ms. Valliere explained, she did not finally decide to run until she filed the papers the following April. The tension arose from two sources: her feeling that Mr. Valliere's efforts were premature and his attempt to force her to run and her concern that, if she did run, her campaign and Mr. Valliere's political committee would be competing for the same funds. The latter point proved an issue, as potential contributors felt that they had already contributed to Ms. Valliere's campaign if they had already given to Mr. Valliere's political committee.

11. At this time, Ms. Valliere wrote Mr. Valliere a note that complained that he was pressuring her to run, and she wanted the CCMC money, which had been obtained from the legal defense fund contributors, returned to the contributors. Shortly after delivering this note, Ms. Valliere had an argument with Mr. Valliere about this matter and did not speak to him for at least three weeks, although they agreed at least that CCMC would return the money if Ms. Valliere chose not to run. In October 2005, Mr. and Ms. Valliere had lunch, and she told him he could do what he wanted with CCMC, and she would do what she wanted to do with her political campaign.

12. Mr. Valliere admits to being controlling and manipulative. These admissions are accepted and will largely suffice for purposes of this Final Order. The relationship between Mr. and Ms. Valliere from April through August 2006 is the pivotal issue for the myriad campaign finance violations alleged in these cases. Mr. Valliere obviously tries to control and manipulate, prompting persons dealing with him to document discussions with him. He is intense, hyperactive, apparently accustomed to getting his own way, and likely relentless in bending exchanges or transactions to conform to his will or understanding.

13. In general, the likelihood of a firewall between a husband and wife, so as to preclude attributing the acts and omissions of the husband to the wife, may be low, but the determination depends on the facts of a given case. Here, it is a particularly complex determination because the period in question may not be representative of the longer relationship that has

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existed between Mr. and Ms. Valliere. It is also a complex determination because, as Mr. Sorenson described the Vallieres' relationship during the campaign, it was "weird," a "love-hate thing."

***5** 14. However, two credible, independent witnesses confirm that, in April and late June, Ms. Valliere was upset to the point of tears with her husband about relationship issues that transcended mere differences in whether or how she would run for re-election to a seat on the county commission. Nothing in the record suggests a reconciliation in the ensuing two months, so as to provide a firmer basis on which to infer coordination between the political campaign and the political committee. To the contrary, from Ms. Valliere's perspective, as she testified during her deposition, she decided to go it alone and handle her campaign pretty much herself.

15. After spending many hours in hearing with Mr. Valliere, the Administrative Law Judge finds it highly likely that, at various times during the campaign, Ms. Valliere was fed up with him, aggravated with him, and estranged from him. It is equally unlikely that Mr. Valliere would be deterred by Ms. Valliere's feelings about his actions, ostensibly on his wife's behalf. It is impossible to say on this record that it is likely, but it certainly is plausible, that, except where directly prohibited or ordered to act, as noted in the few instances below, Mr. Valliere was obstinately going to attend to the myriad, detailed tasks that he had set for himself in his political committee, regardless of his wife's desire, consent, or even knowledge.

16. In November 2005, Mr. Valliere entered into a contract with his son, Jonathan, a young adult, who spent considerable time with Mr. and Ms. Valliere separately, but did most of his computer design work at Ms. Valliere's condominium, at least after April 2006. The contract called for Mr. Valliere's son to perform certain computer design work, for which he has a recognized talent, on behalf of CCMC, but prohibited him, under pain of nonpayment, from disclosing any of his work to Ms. Valliere. The work was for large signs, yard signs, vehicle banners, and billboard banners. Over the next couple of months, Jonathan completed the design work, by the agreed-upon deadlines, for all of the items.

17. In February and March 2006, Jonathan completed design work for large campaign signs. Ms. Valliere remained ambivalent about running, but she attended a candidate training session during this period. In March 2006, Jonathan completed design work on small yard signs. In the first week of April, he completed the design work on a sign proclaiming that Ms. Valliere supported a controversial local bridge project, but not advocating the election of Ms. Valliere or defeat of her opponent.

18. April proved to an eventful month for Mr. and Ms. Valliere. On April 23, Ms. Valliere filed the materials necessary to run for re-election, and she designated Kirk Sorenson as her campaign manager or, with her, co-manager.

19. About ten days earlier, Ms. Valliere hosted Mr. Valliere and attorneys Sherlock and Heims for a pizza dinner at her condominium. The purpose of the meeting was mostly to try to enlist the support of Ms. Sherlock and Mr. Heims for Ms. Valliere's re-election. During the course of the meeting, Mr. Valliere showed Ms. Sherlock and Mr. Heims a sign that he and Jonathan had prepared for the campaign and discussed the other signs for which Mr. Valliere had assumed responsibility.

***6** 20. Mr. Valliere prided himself in his sign work. He was the first in Martin County to use a sign on material that stretched over an entire motor vehicle. It does not appear that his conversation about the signs established coordination between CCMC and the campaign concerning signs. Design work was complete, although it could still be changed and little production had taken place. However, nothing suggests that the role of Ms. Valliere, while Mr. Valliere proudly described his work to her guests, was any more than that of a dutiful wife listening to her husband extol his own virtues at a party. While it is true that Mr. Valliere's conversation would have communicated to Ms. Valliere that CCMC's efforts would be focused on signs, this hardly qualifies as meaningful coordination for three reasons: first, Mr. Valliere would likely emphasize signs because he viewed them as his specialty; second, Mr. Valliere had already begun posting signs around town and would very soon post many more; and third, Mr. Valliere's emphasis on signs would have been

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apparent to Ms. Valliere, regardless of the pizza party, because Ms. Valliere was taking a more measured approach to the campaign and had reasonably chosen to start up promotional activities closer to the primary, while Mr. Valliere had hit the ground running.

21. It is as likely as not that the sign in her condominium was actually a point of irritation for Ms. Valliere. Two or three days before the pizza dinner, Mr. Valliere and Jonathan had placed 6-12 campaign signs in various locations, such as a local Wal-Mart, where they could be seen by voters. They placed one against some bushes in the parking lot of Ms. Valliere's condominium. When she saw it, she called Mr. Valliere and, learning of his placement of the other signs, ordered him, "Get the damn signs down." Within a few days, Mr. Valliere and Jonathan removed all of the signs—Jonathan taking the one by Ms. Valliere's parking spot upstairs into her condominium where Ms. Sherlock and Mr. Heims later saw it.

22. There is no reason to doubt the Vallieres' version of this event. Ms. Valliere believed that local voters would resent a candidate whose signs came out too early, and she was not fully decided about running again, so she viewed the signs as an attempt to manipulate her by Mr. Valliere.

23. Starting in mid-to-late April, Ms. Valliere and Mr. Sorenson met to discuss her campaign. Her 2002 campaign had involved many volunteers. Although grateful for their efforts, Ms. Valliere wished to avoid the organizational challenges that such a grassroots effort presented, so she did not wish to involve nearly as many volunteers in 2006.

24. In their early meetings at least, Ms. Valliere expressed her frustration that Mr. Valliere's involvement with CCMC prevented his participation with her campaign directly. However, unable to obtain as her treasurer the woman who had served in that role in the 2002 campaign, and evidently unwilling to assume the duties again herself, Ms. Valliere approached Mr. Valliere about serving as the campaign treasurer, after discussing this matter with Mr. Sorenson. Ms. Valliere felt that she had no one else available for the position, and she showed Mr. Sorenson a copy of the statute, discussed below, that permits one person to serve in the campaign and a political committee.

***7** 25. After initially expressing reluctance about his ability to serve both entities, Mr. Valliere studied the statute that expressly permits such dual service and agreed to do so, limiting himself, at least initially, to checking the post office box daily for checks, making deposits, writing checks, preparing reports, and similar administrative tasks. As he had done with his son, so he did with his wife: Mr. Valliere drew up a contract for him and his wife that would confirm that his campaign duties would be ministerial. Mr. Valliere agreed with Ms. Valliere and Mr. Sorenson that the statute would allow him to serve as the campaign treasurer as long as he did not get involved in substantive decisionmaking for the campaign.

26. Ms. Valliere and Mr. Sorenson discussed campaign issues, particularly how to raise money. They concentrated on direct mailing with some newspaper ads to solicit funds. Much of the work of Ms. Valliere and Mr. Sorenson involved his review of her ideas, presented in the form of sketches and text for various types of campaign literature and ads. Mr. Sorenson would make suggestions about language and graphics, such as photographs, to be used in ads or campaign literature. They then used Jonathan to produce on his computer finished ad copy, which Ms. Valliere and Mr. Sorenson would then revise, until they agreed upon the final form.

27. When discussing signs, in June, Ms. Valliere and Mr. Sorenson agreed that yard signs would not be needed until about one month prior to the primary election. They worked on a sign design, which featured a yellow background, which contrasted with the blue background on the signs produced by CCMC. However, by early July, Ms. Valliere and Mr. Sorenson saw the CCMC signs that were appearing all over the county, so they decided not to produce any signs. CCMC enlisted the aid of local firefighters who had volunteered their time to place about 150 of the large signs and 500 of the yard signs throughout the county. Although the brunt of their effort resulting in sign deployment in mid to late July, signs were placed in the county prior to that time.

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28. Because Mr. Valliere focused his efforts almost exclusively on signs, this clear allocation of tasks—the political committee handling the signs, and the political campaign not using signs—requires close consideration of whether there was coordination between the political committee and political campaign. Obviously, Jonathan would have been a convenient vehicle for communications between the two camps concerning signs. However, two factors militate against coordination on this issue. First, Ms. Valliere and Mr. Sorenson agreed that, as an incumbent, she had name recognition and did not need to rely as much on yard signs. Second, according to the testimony of another local political candidate, who did not use yard signs, local campaigns sometimes do not use yard signs at all.

29. Overall, Ms. Valliere disapproved of the number of signs that Mr. Valliere placed throughout the county. In her discussions with Mr. Sorenson, she consistently stated her desire to emphasize television and newspapers, rather than yard signs.

***8** 30. The difficulty in describing the relationship of Mr. and Ms. Valliere, as noted above, extends to trying to determine the extent to which she could control his actions during the campaign, which spanned only the months of May, June, July, and August. As noted above, in early April, before she filed her papers, she could, and did, order him to remove signs that he had already placed in public places. At that time, she had the leverage with Mr. Valliere of possibly deciding not to run.

31. Two other transactions cast additional light on the extent to which Ms. Valliere could cause Mr. Valliere to act. One involves the firefighters, who supported Ms. Valliere due to her support of firefighting issues during her first term. The firefighter who testified stated that they decided to support Ms. Valliere in early June. He then called Ms. Valliere and offered their customary help in assembling and placing signs. One to two weeks later, Mr. Valliere called the firefighter and told them his political committee was handling the signs, and they must not communicate anything about the signs with Ms. Valliere. Working with Mr. Valliere, the firefighters deployed the signs in July.

32. The most likely inference is that Ms. Valliere told Mr. Valliere to call the firefighters due to their offer to help with signs. As in the next transaction, Ms. Valliere could have handled this matter better, such as by telling the firefighters that her campaign was not going to use signs, but they might contact CCMC to see if it was. However, for the reasons noted above in connection with the pizza party, Ms. Valliere already knew, by means not suggestive of unlawful coordination, that CCMC was going to do signs, so a mere mention of the firefighters' offer to her husband, while suggestive of coordination, does not establish the level of coordination that robs the political committee's expenditures of their independent status.

33. The other transaction arises from a home meeting on July 24, 2006, of political candidates and persons traditionally involved in local politics and community issues. Someone asked Ms. Valliere about the placement of her signs in proximity to the signs of another candidate—evidently, given the politics of the other candidate, the physical proximity implied a philosophical proximity with which Ms. Valliere would be uncomfortable. Rather than answer the criticism by saying merely that a political committee had arranged for the placement of those signs and the questioner could take it up with Mr. Valliere, Ms. Valliere replied by saying that the firefighters had erected the signs, but she would speak to Mr. Valliere and Jonathan about separating them.

34. Ms. Valliere's handling of the sign-proximity issue suggests, but it remains necessary to analyze the entire transaction in context. She evidently had the authority to contact Mr. Valliere and tell him to ensure a minimum spacing of her signs from the signs of other candidates. Her leverage in this transaction is harder to find than in the initial transaction, in which she told her husband to take the "damn" signs down with the implied threat of not filing to run, or in the next transaction, in which she called to her husband's attention a potentially serious mistake that he had made with the design of the signs. However, if a firefighter had placed a sign in front of a strip club or abortion clinic, Ms. Valliere could have "coordinated" with Mr. Valliere (i.e., told him to get those "damn" signs down too) without jeopardizing the independence of the

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expenditures of the political committee in producing and deploying the signs. All of these transactions describe elements of coordination, but not of such an extent as to cause the CCMC expenditures to fail the test of independence.

***9** 35. The final transaction between Ms. and Mr. Valliere concerning signs arose in mid to late August. At this time, Ms. Valliere testified that she first noticed that the CCMC signs bore the following disclaimer: "Paid Political Advertisement by Citizens Committee of MC; approved by Susan Valliere, Republican, District # 2." She ordered Mr. Valliere to fix the signs because she had not approved them. Jonathan seems to have designed a label that could be placed over the offending disclaimer, and Mr. Valliere, with the help of local firefighters, was able to have about 90 percent of the offending signs, according to Mr. Sorenson, altered to cover up the disclaimer.

36. Jonathan plausibly claims responsibility for adding the disclaimer, borrowing it from the signs used in the 2002 campaign, although Mr. Valliere certainly read the sign language in its entirety prior to production. No evidence suggests that Ms. Valliere approved the signs, although she had read the signs once they were placed in the community. They involved her. They were produced by her husband, with whom she had had sharp differences over his approach to her campaign. They had been out in the community for over two months before she voiced her displeasure with the disclaimer. Ms. Valliere never disapproved of the disclaimer because, as a matter of fact, she did approve of the signs —not in advance of their production and placement, but after they were placed in the community. What changed a couple of weeks before the election is that, as a matter of law, she realized that she risked linking her campaign with Mr. Valliere's political committee by allowing the signs to contain the offending disclaimer.

37. But accepting the benefits of the products of the political committee is not coordinating with it. Any candidate accepts the benefits of the political committee working, independently, to promote the candidate. On occasion, Ms. Valliere would wave a sign produced by CCMC or appear at an event wearing a CCMC-produced T-shirt. Similarly, she could, without establishing coordination, accept the fruits of the unrelated labors of her husband and stepson, as she did at the Stuart's Women's Club in late August 2006, when Mr. Valliere actively campaigned among the crowd and Jonathan photographed the event, presumably for promotional purposes. Neither of these acts, from the perspective of the husband and stepson, had anything to do with CCMC.

38. In its name, CCMC placed orders with vendors for all of the political products, such as signs and T-shirts; vendors invoiced CCMC for all of these items, and CCMC paid these invoices with CCMC checks. All of these transactions were completed without the advance knowledge or approval of Ms. Valliere, directly or indirectly, such as through Jonathan or Mr. Sorenson. Nor did CCMC pay for any of the obligations of the political campaign.

39. As campaign treasurer, Mr. Valliere obtained quotes for the campaign from various vendors, if instructed to do so by Ms. Valliere. He sometimes served as a communications intermediary between vendor representatives and Ms. Valliere or Mr. Sorenson. He even signed off on some proofs of flyers and direct mailings and became intimately involved in the scheduling of some promotional products. Although, in such acts, Mr. Valliere was exercising more than the ministerial authority of a campaign treasurer, he was not coordinating between the political committee and the political campaign; he was only ensuring that the campaign received good value for its expenditures.

***10** 40. Likely to the relief of many, CCMC disbanded on October 12, 2006.

41. Ms. Valliere wilfully failed to sign and certify as correct the two campaign treasurer's reports cited in Counts 1 and 2. As noted below in the Conclusions of Law, the wilfulness requirement applies to certifying an incorrect report. From the language of the statute, the failure to sign and certify a report is strict liability, but, in an abundance of caution, the findings are that Ms. Valliere's failure to sign and certify both reports was wilful, as in an intentional wrongful act at the time of the filing of these reports. As defined in the Conclusions of Law, her failure to sign and certify both reports was also, in the alternative, an act of conscious culpability.

42. The campaign treasurer report for 2006 Q2 was due on July 10, 2006, and covered April 1 through June 30, 2006. Due to a problem in the original report, Mr. Valliere had to file an amended campaign treasurer's report and did so on July 26, 2006-without Ms. Valliere's signature because the amended report was prepared in the office of the Supervisor of Elections.

43. Mr. Valliere testified that he never informed Ms. Valliere about the amended report and the requirement that she sign it. This is untrue. First, Ms. Valliere had served as her own treasurer in the previous election and is well-versed in the requirements of Chapter 106, Florida Statutes, so she knew that she had reports due when they were due. Also, a failure to report the amended report would be out of character for Mr. Valliere, who takes obvious pride in his attention to details. He had very little in the way of responsibilities in the political campaign, and the inference is inescapable that he informed Ms. Valliere about this problem. In fact, exactly what he told her is probably revealed by the situation surrounding the other campaign treasurer's report that is missing Ms. Valliere's signature.

44. The campaign treasurer's report for 2006 F3 was due on September 1, 2006. Hurrying out of town on personal business, Mr. Valliere filed this report, again without Ms. Valliere's signature. On his trip, he realized that the filed report had an error in it, so he called Ms. Valliere and instructed her not to sign the report filed on August 31, but to wait for a three-day letter from the Supervisor of Elections, as provided by Section 106.07(2)(b) 1, Florida Statutes, which is discussed in the Conclusions of Law. In the meantime, by regular mail, Mr. Valliere mailed a corrected report on August 31, but Ms. Valliere did not sign that one either.

45. On several occasions, the Assistant Supervisor of Elections for Martin County asked Mr. Valliere to have Ms. Valliere come in and sign the reports, but Ms. Valliere never did so until March 2007, after a complaint had been filed. Ms. Valliere testified that she did not sign and certify the reports because her husband said she did not have to, but, on his advice, waited for the three-day letter. Ms. Valliere admitted that she never asked for this letter until after the complaint had been filed against her; by then, the Supervisor of Elections declined to issue the letter.

***11** 46. However, this record offers no support for a finding that Ms. Valliere relied on her husband's advice, but instead wilfully declined to sign and certify these two reports. By the time of the second incorrect report that required amendment, Ms. Valliere had discovered that her husband had made a serious error in the preparation of the disclaimer on the signs, as well as two errors that required amending campaign treasurer's reports. Even without this knowledge, Ms. Valliere would not have accepted the advice of her husband because she had cut the strings from her husband during this campaign and was herself handling the campaign responsibilities. As this fact shields her from responsibility for dozens of campaign expenditures, so it exposes her to liability for the two reports that she refused to sign and certify in an act of wilful disobedience to the law and, were it not, an act of conscious culpability (again, assuming that a complete failure to sign and certify a campaign treasurer's reports, as distinguished from certifying incorrect reports, even requires a finding of wilfulness).

47. The sole remaining count against Mr. Valliere is Count 1. The 2006 F3 campaign treasurer's report certified by Mr. Valliere to be correct omitted $2014 in two expenditures made during the covered period. Mr. Valliere filed a handwritten amended report, ostensibly to correct a math error, but actually intended to conceal the material omission from the original report, which Mr. Valliere certified was correct when it was not. Thus, the finding is that Mr. Valliere's false certification of the correctness of the report was wilful, as in an intentional wrongful act at the time of the filing of the report. As defined in the Conclusions of Law, his failure to sign and certify both reports was also, in the alternative, an act of conscious culpability.

48. Mr. Valliere knew that the items were missing when he filed the original report. His certification of correctness of the original 2006 F3 campaign treasurer's report was wilful and, were it not, would have been an act of conscious culpability. Additional evidence of wilfulness and conscious culpability in connection with this transaction are based on

Mr. Valliere's attempt to conceal the original omission by claiming a mathematical error, when the actual error was one of omission of these two items.

49. Among aggravating and mitigating circumstances, the Administrative Law Judge accepted the parties' stipulation that findings of the Valliere's finances would present neither an aggravating nor mitigating circumstance. Also, neither Mr. nor Ms. Valliere has ever violated any campaign finance law prior to this case. However, the violations involving campaign treasurer's reports are serious, as they undermine the reporting obligations that are the cornerstone of Chapter 106, Florida Statutes. Ms. Valliere's refusal to sign the two campaign treasurer's reports, at the time and over the ensuing one and one-half years, is contumacious, as is Mr. Valliere's role in this refusal to conform to the requirements of law and his intentional wrongdoing in connection with the filing violation of which he has been found guilty. Obviously, neither party exhibited good faith in trying to comply with the laws that they have been proved to have violated.

CONCLUSIONS OF LAW

***12** 50. The Division of Administrative Hearings has jurisdiction over the subject matter. §§ 106.25(5), 120.569, and 120.57(1), Fla. Stat. (2008).

51. Respondents dispute the jurisdiction in this case for nearly all the counts. They contend that Petitioner lacked jurisdiction to investigate the complaints underlying Counts 3-28 against Ms. Valliere and Counts 3-80 and 83 against Mr. Valliere because the complaints were based on hearsay. By Order entered February 6, 2008, the Administrative Law Judge dismissed Counts 2, 81, and 82 against Mr. Valliere because they exceeded the scope of the complaints, dismissed Count 83 because it was based on Mr. Lennon's hearsay denial of involvement in the CCMC finance committee that would not likely be admissible, and denied the remainder of the motion.

52. In contesting the jurisdiction of Petitioner, Respondents argue that an amendment to Section 106.25(2), Florida Statutes, limits Petitioner's jurisdiction to investigate complaints to those "based upon personal information or information other than hearsay." This is the holding of Jennings v. Florida Elections Commission, 932 So. 2d 609 (Fla. 2d DCA 2006), so the jurisdictional change was retroactive.

53. The more difficult task is to give meaning to this new limitation on Petitioner's jurisdiction to investigate complaints. An agency's interpretation of a statute that it must apply is given great weight, Arza v. Florida Elections Commission, 907 So. 2d 604 (Fla. 3rd DCA 2005), but a penal statute is construed against the agency. Diaz de la Portilla v. Florida Elections Commission, 857 So. 2d 913 (Fla. 3d DCA 2003), rev. denied 872 So. 2d 899 (Fla. 2004). A more helpful case on statutory interpretation is Englewood Water District v. Tate, 334 So. 2d 626, 628 (Fla. 2d DCA 1976), in which the court stated:
It is well settled that in construing a statute the court should consider its history, evil to be corrected, the intention of the law-making body, subject regulated and the object to be obtained. *Smith v. Ryan*, Fla.1949, 39 So.2d 281. It is also a rule of statutory construction that it is the duty of the court to examine the statute as a whole in order to determine its meaning and if the intent of the legislature is clear and unmistakable from the language used, it is the court's duty to give effect to that intent. Rules of statutory construction should be used only in case of doubt and should never be used to create doubt, only to remove it. State v. Egan, Fla.1973, 287 So.2d 1, and Scenic Hills Utility Company v. City of Pensacola, Fla.App.1st 1963, 156 So.2d 874. It was held in State v. Sullivan, 1928, 95 Fla. 191, 116 So. 255, at page 261:
... In statutory construction legislative intent is the pole star by which we must be guided, and this intent must be given effect even though it may appear to contradict the strict letter of the statute and well settled canons of construction. The primary purpose designated should determine the force and effect of the words used in the act and no literal interpretation should be given that lends to an unreasonable or ridiculous conclusion or a purpose not designed by the lawmakers.

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***13** 54. The purpose of the new limitation on Petitioner's jurisdiction was to raise the bar on what complaints would spawn an investigation of a candidate for elective office. Few, if any, meritorious prosecutions would be lost by a prohibition against an investigation based on a report from a customer in a barbershop who overheard another customer complain to his barber that Candidate X is wilfully circumventing Florida's campaign finance law. On the other hand, many meritorious prosecutions would be lost by a construction of the new prohibition that bars Petitioner from investigating a complaint from Candidate X's neighbor, to whom the candidate admitted that he wilfully violated Florida's campaign finance law.

55. Of course, the Legislature is free to choose to deny Petitioner investigatory jurisdiction of the latter case, in which Candidate X admits to another person that the candidate has wilfully violated the law. The point of statutory construction is not to engage in some form of remedial lawmaking, but to ensure that subsequent interpretations of the actual legislation do not force upon the Legislature a policy choice that it likely did not make when enacting the subject legislation.

56. Respondents argue that the new statutory prohibition bars all hearsay-based complaints, but do not claim that the complaints concerning the campaign treasurer's reports are subject to dismissal on this ground. However, those reports are hearsay, just as is a candidate's out-of-court statement admitting that he wilfully violated the campaign finance laws. Section 90.801(1)(c), Florida Statutes, defines "hearsay" as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." But Respondents tacitly concede that the new prohibition was never intended to bar prosecutions arising from citizen complaints based on campaign treasurer's reports.

57. The campaign treasurer's reports and the candidate's admission are distinguishable from the overheard barber shop conversation. The reports and admission will be admissible because they are well-established exceptions to hearsay —Section 90.803(6) and (18), Florida Statutes—but the barber shop conversation will not be admissible because it is not an exception to hearsay. The distinction in the treatment of these hearsay statements lies in the levels of their reliability—exactly what the Legislature was addressing in the new limitation upon Petitioner's jurisdiction. Interestingly, Respondents' failure to challenge Petitioner's jurisdiction as to the campaign treasurer's reports implies acceptance of the necessity of two sources of hearsay to the complaint: the report itself and underlying financial information, such as bank records, invoices, and canceled checks—all admissible hearsay under Section 90.801(6), Florida Statutes—to prove that statements in the campaign treasurer's reports are incorrect.

***14** 58. Superficially appealing, Respondents' interpretation of the new statutory limitation on Petitioner's jurisdiction comes dangerously close to rendering the Legislature's attempt to require more reliability from citizen complaints to a prohibition against citizen complaints.

59. The better interpretation of the new statutory limitation preserves the distinction between, on the one hand, hearsay that will never be admissible— e.g., the overheard barber shop conversation—and, on the other hand, hearsay that, by itself, is admissible—e.g., the admission of the candidate—or will likely be admissible—e.g., with the testimony of a records custodian, the campaign treasurer's report, as provided by Section 90.806(6)(a), Florida Statutes. This interpretation, distinguishing between admissible hearsay and inadmissible hearsay, governs the acceptance of affidavits in summary-judgment practice under Rule 1.510, Florida Rules of Civil Procedure, which requires that affidavits be based on "personal knowledge [and] shall set forth such facts as would be admissible in evidence ...." Courts have construed this or similar language to exclude inadmissible hearsay, Department of Financial Services v. Associated Industries Insurance Company, Inc., 868 So. 2d 600 (Fla. 1st DCA 2004), but not hearsay that will later prove admissible at trial. Ham v. Heintzelman's Ford, Inc., 256 So. 2d 264 (Fla. 4th DCA 1971) (motor vehicle certificate of title attached to affidavit, which would later be admissible as public record, considered in ruling on motion for summary judgment).

60. Section 106.07(1), (2), and (5), Florida Statutes, provides, in relevant part:

(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. Reports shall be filed on the 10th day following the end of each calendar quarter from the time the campaign treasurer is appointed, except that, if the 10th day following the end of a calendar quarter occurs on a Saturday, Sunday, or legal holiday, the report shall be filed on the next following day which is not a Saturday, Sunday, or legal holiday. Quarterly reports shall include all contributions received and expenditures made during the calendar quarter which have not otherwise been reported pursuant to this section.

(2)(a)1. All reports required of a candidate by this section shall be filed with the officer before whom the candidate is required by law to qualify. All candidates who file with the Department of State shall file their reports pursuant to s. 106.0705. Except as provided in s. 106.0705, reports shall be filed not later than 5 p.m. of the day designated ....

* * *

(b)1. Any report which is deemed to be incomplete by the officer with whom the candidate qualifies shall be accepted on a conditional basis, and the campaign treasurer shall be notified by registered mail as to why the report is incomplete and be given 3 days from receipt of such notice to file an addendum to the report providing all information necessary to complete the report in compliance with this section. Failure to file a complete report after such notice constitutes a violation of this chapter.

***15** 2. In lieu of the notice by registered mail as required in subparagraph 1., the qualifying officer may notify the campaign treasurer by telephone that the report is incomplete and request the information necessary to complete the report. If, however, such information is not received by the qualifying officer within 3 days after the telephone request therefore, notice shall be sent by registered mail as provided in subparagraph 1.

* * *

(5) The candidate and his or her campaign treasurer, in the case of a candidate, or the political committee chair and campaign treasurer of the committee, in the case of a political committee, shall certify as to the correctness of each report; and each person so certifying shall bear the responsibility for the accuracy and veracity of each report. Any campaign treasurer, candidate, or political committee chair who willfully certifies the correctness of any report while knowing that such report is incorrect, false, or incomplete commits a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

61. Respondents contend that the filing violation cannot occur until after the expiration of the three days following written notice, by registered mail, from the qualifying officer, as specified in Section 106.07(2)(b) 1, Florida Statutes. Under this theory, persons covered by Section 106.07(5), Florida Statutes, are not required to certify the correctness of each report until after three days following receipt of certified mail notifying them that the report is incomplete or unfiled.

62. This contention misconstrues the cited portions of Section 106.07, Florida Statutes. The cited provisions require timely filed reports with the obligatory certifications. If the qualifying officer receives incomplete or no reports, the cited provisions require the filing of complete reports within three days after written notice, by registered mail, from the qualifying officer. The failure to file a timely report, the failure to include the required certifications, and the failure to file a complete report within three days after written notice are separate violations.

63. All this is clear in Section 106.07(8)(d), Florid Statutes, which states:

> The appropriate filing officer shall notify the Florida Elections Commission of the repeated late filing by a candidate or political committee, the failure of a candidate or political committee to file a report

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> after notice, or the failure to pay the fine imposed. The commission shall investigate only those alleged late filing violations specifically identified by the filing officer and as set forth in the notification. Any other alleged violations must be separately stated and reported by the division to the commission under s. 106.25(2).

64. An officer is required to notify Petitioner of repeated late filings of reports or the failure to file a report after notice; these are separate violations. Jurisdictionally, the mere fact of late filing requires "repeated" incidents before Petitioner may acquire jurisdiction to investigate; inferentially, this statute imposes no such requirement when a third party complains of a single late filing. Either way, though, contrary to Respondents' arguments, the written notice does not serve as a condition precedent to an alleged violation of an untimely filing or, here, a filing that omitted a required certification.

***16** 65. Section 106.08(1)(a), Florida Statutes, provides in material part:

> Except for political parties, no person, political committee, or committee of continuous existence may, in any election, make contributions in excess of $500 to any candidate for election to or retention in office or to any political committee supporting or opposing one or more candidates ....

66. Section 106.08(7), Florida Statutes, provides that a person who "knowingly and willfully" makes or accepts one or more contributions in excess of the limits of Section 106.08(1) commits a criminal violation, and such person, pursuant to Section 106.08(8), Florida Statutes, shall pay the state double the amount of the unlawful contribution.

67. Section 106.19(1)(a) and (b), Florida Statutes, provides:

Any candidate; campaign manager, campaign treasurer, or deputy treasurer of any candidate; committee chair, vice chair, campaign treasurer, deputy treasurer, or other officer of any political committee; agent or person acting on behalf of any candidate or political committee; or other person who knowingly and willfully:

(a) Accepts a contribution in excess of the limits prescribed by s. 106.08; [or]

(b) Fails to report any contribution required to be reported by this chapter ...

* * *

is guilty of a misdemeanor of the first degree, punishable as provided in s. 775.082 or s. 775.083.

68. Another issue concerning the effective date of recent statutory amendments arises with respect to the meaning of "wilful." This word was defined in former Section 106.37, Florida Statutes, which predicated a violation on a person committing an act "while knowing that, or showing reckless disregard for whether, the act is prohibited ...." The now-repealed statute added, "A person shows reckless disregard for whether an act is prohibited or required ... if the person wholly disregards the law without making any reasonable effort to determine whether the act would constitute a violation ...."

69. Relying on Metropolitan Dade County v. Chase Federal Housing Corporation, 737 So. 2d 494 (Fla. 1999), the Administrative Law Judge ruled that fairness required the retroactive application of this change to the required state of mind, so that the repealed statutory definition would not apply to these cases. See also McGann v. Florida Elections Commission, 803 So. 2d 763 (Fla. 1st DCA 2001). But see Adelsperger v. Riverboat, 573 So. 2d 80 (Fla. 2d DCA 1990). This issue is addressed at greater length in a separate order issued during the pendency of these proceedings.

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70. Giving retroactive effect to the repeal of the statutory definition of "wilful," the question arises as to the meaning of this word. Clearly, a knowing act satisfies the requirement. In County Canvassing Board v. Lester, 96 Fla. 484, 489-90, 118 So. 201, 202-03 (1928), the Florida Supreme Court stated:

> The word "willfull," like many other words in our language, is elastic and is of somewhat varied signification according to the context in which it is found and the nature of the subject matter to which it refers. Sometimes "willfully" is used synonymously with "voluntarily." In construing statutes of a penal or quasi-penal nature, however, a clear distinction is recognized between a mere "failure" and a "willfull failure." As used in such statutes, a "willful failure" to obey is almost universally held to mean something more than a mere inattentive, inert or passive omission. "Willful," when used in such statutes, denotes some element of design, intention, or deliberation, a failure resulting from an exercise of the will, or a purpose to fail. A "willful failure" denotes a conscious purpose to disobey, a culpable omission, and not merely innocent neglect. A failure without any element of intention, design or purpose, and resulting merely from innocent neglect, is not a "willfully" [sic] failure. Every voluntary act of a person is intentional, and therefore in a sense willful, but generally speaking, and usually when considering statutes of the character mentioned, a voluntary act becomes "willful" in law only when it involves some degree of conscious wrong on the part of the actor, or at least culpable carelessness on his part, something more than a mere omission to perform a previously imposed duty. Shuman v. State, 62 Fla 84, 56 So. R. 694; State v. Meek, 172 N. R. 1023; Ann. Cas. 1912C, 1075; Felton v. U.S., 96 U.S. 702, 24 L. Ed. 875; Roberts v. U.S., 126 Fed. 897, 904; State v. Edmunds, 104 N.W.R. 1115; Brown v. State, 119 N.W.R. 338; Potter v. U.S., 155 U.S. 437; 39 L. Ed. 214; Spurr v. U.S. 174 U.S. 728; 43 L. Ed. 1150.

***17** 71. Petitioner established an intentional wrongful act in each of the three proved violations. Additionally, Petitioner also proved the lesser state of mind allowed by Lester. The repeal of Section 106.37, Florida Statutes, suggests that the mere failure to make a reasonable effort to inform oneself about the requirements of the law is, standing alone, insufficient to establish wilfulness, although it may be a factor in determining wilfulness. The use in the Findings of Fact of "an act of conscious culpability" is intended to mean both alternative Lester elements: culpable omission and conscious wrong. Again, though, the evidence in these cases is sufficient to prove an intentional act of wrongdoing under the more straightforward meaning of willful.

72. Other important statutory definitions cover "contributions," "expenditures," and "independent expenditures." Section 106.011(3)(a)-(c), Florida Statutes, defines "contribution" as:

(a) A gift, subscription, conveyance, deposit, loan, payment, or distribution of money or anything of value, including contributions in kind having an attributable monetary value in any form, made for the purpose of influencing the results of an election or making an electioneering communication.

(b) A transfer of funds between political committees, between committees of continuous existence, between electioneering communications organizations, or between any combination of these groups.

(c) The payment, by any person other than a candidate or political committee, of compensation for the personal services of another person which are rendered to a candidate or political committee without charge to the candidate or committee for such services.

* * *

73. Section 106.011(4), Florida Statutes, provides:

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(a) "Expenditure" means a purchase, payment, distribution, loan, advance, transfer of funds by a campaign treasurer or deputy campaign treasurer between a primary depository and a separate interest-bearing account or certificate of deposit, or gift of money or anything of value made for the purpose of influencing the results of an election or making an electioneering communication. However, "expenditure" does not include a purchase, payment, distribution, loan, advance, or gift of money or anything of value made for the purpose of influencing the results of an election when made by an organization, in existence prior to the time during which a candidate qualifies or an issue is placed on the ballot for that election, for the purpose of printing or distributing such organization's newsletter, containing a statement by such organization in support of or opposition to a candidate or issue, which newsletter is distributed only to members of such organization.

(b) As used in this chapter, an "expenditure" for an electioneering communication is made when the earliest of the following occurs:

1. A person enters into a contract for applicable goods or services;

***18** 2. A person makes payment, in whole or in part, for the production or public dissemination of applicable goods or services; or

3. The electioneering communication is publicly disseminated.

74. Section 106.011(5)(a), Florida Statutes, states:

> "Independent expenditure" means an expenditure by a person for the purpose of expressly advocating the election or defeat of a candidate or the approval or rejection of an issue, which expenditure is not controlled by, coordinated with, or made upon consultation with, any candidate, political committee, or agent of such candidate or committee. An expenditure for such purpose by a person having a contract with the candidate, political committee, or agent of such candidate or committee in a given election period shall not be deemed an independent expenditure.

75. The distinction between "contributions" and "expenditures," on the one hand, and "independent expenditures," on the other hand, is that the candidate must report the former, under Section 106.07, Florida Statutes, but the person making the independent expenditure must report the latter, pursuant to Section 106.071, Florida Statutes. See Beardslee v. Florida Elections Commission, 962 So. 2d 390 (Fla. 5th DCA 2007).

76. The Beardslee decision discusses the agency relationship that will preclude an independent expenditure. The court noted that the requisite agency relationship between a candidate and her husband who had bought campaign yard signs could be inferred from past dealings between the parties and the facts and circumstances. Sustaining a finding that the husband's yard-sign expenditures were not independent from the wife's campaign, the court noted that the husband had used funds from a joint checking account to acquire the signs, the husband had been active in his wife's campaign, and, before the election, the wife had seen her husband and the signs, which bore the legend, "Paid Political Advertisement by Judy Beardslee."

77. However, the Legislature has precluded the use of one factor, in itself, to establish the agency relationship. Section 106.025(1)(c), Florida Statutes, states: "An individual may be appointed and serve as campaign treasurer of a candidate and a political committee ...." By authorizing one person to serve in this capacity in a campaign and a political committee, the legislature impliedly precluded reliance on this factor, without more, to establish the agency relationship to preclude independent expenditures.

78. Petitioner must prove the material allegations by clear and convincing evidence. Diaz de la Portilla v. Florida Elections Commission, 857 So. 2d 913 (Fla. 3d DCA 2003).

79. Section 106.265, Florida Statutes, authorizes Petitioner to impose fines of not more than $1000 per count and identifies several aggravating and mitigating circumstances. The reference to "Petitioner" in this statute is an inadvertent remnant from the period, prior to January 1, 2008, when Petitioner, not the Division of Administrative Hearings, entered the final orders in these cases. Pursuant to Section 106.25(5), Florida Statutes, the Administrative Law Judge now enters the final order in these cases.

***19** 80. Petitioner has proved by clear and convincing evidence the violations in Counts 1 and 2 against Ms. Valliere and the violation in Count 1 against Mr. Valliere.

81. Most of the claims in these cases turn on whether expenditures by the CCMC are independent expenditures, which turns on whether CCMC's expenditures are controlled by, coordinated with, or made on consultation with the political campaign. (As used in this Final Order, "coordination" encompasses these three actions.) The evidence fails to establish that the political campaign—in the form of Ms. Valliere or Mr. Sorenson—had any of these relationships on the expenditures of CCMC, or that Mr. Valliere served as the conduit between the two entities for the purpose of establishing coordination. Clearly, some elements of coordination existed, as when Ms. Valliere demanded that Mr. Valliere remove the signs in April, move the signs in July, and fix the signs' disclaimer in August. Also, Ms. Valliere referred the firefighters to Mr. Valliere's CCMC so they could help with the signs. But none of these acts is direct evidence of coordination of expenditures, nor are the several instances in which Ms. Valliere made use of CCMC-produced campaign items, like signs or T-shirts.

82. The closest direct evidence of coordination of expenditures is the pizza party, in which Mr. Valliere described the signs that he was making to promote his wife's re-election efforts. However, for the reasons stated above, this does not constitute coordination of expenditures. Further, nothing suggests that Mr. Valliere detailed a production schedule, rather than extolled his virtues in sign design and production.

83. The common involvement of Jonathan and Mr. Valliere in the activities of both entities was suspicious, but nothing more. (Just as Petitioner may not make its case entirely on Mr. Valliere's service as treasurer to both the campaign and the committee, neither can respondents seize the statute as some sort of safe harbor.) Also, if the record suggested a long queue of contributors eager to double up on their maximum contributions by contributing to Ms. Valliere and to Mr. Valliere, perhaps the inferences on which Petitioner's cases rely would have met the formidable standard of proof involved in cases such as these.

84. But, ultimately, Petitioner's direct and inferential evidence of coordination of expenditures cannot overcome the fact that, although ostensibly united in the goal of Ms. Valliere's re-election, CCMC and the political campaign were in competition, and, strangely, this fact does not seem at odds with the intent of both spouses or the nature of their relationship.

85. The fines for the two counts that Petitioner has proved against Ms. Valliere and one count against Mr. Valliere should be the maximum allowed by law, given the seriousness of three of the violations, and the lack of good faith.

FINAL ORDER

Based on the foregoing,

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ORDERED that Ms. Valliere is guilty of Counts 1 and 2 of the Order of Probable Cause and is fined $2000; Mr. Valliere is guilty of Count 1 of the Order of Probable Cause and is fined $1000; and the remaining counts, not already dismissed, are dismissed.

***20** DONE AND ORDERED this 1st day of July, 2009, in Tallahassee, Leon County, Florida.

ROBERT E. MEALE
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060

Filed with the Clerk of the Division of Administrative Hearings this 1st day of July, 2009.

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 the original Notice of Appeal with the agency clerk of the Division of Administrative Hearings and a 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 appeal must be filed within 30 days of rendition of the order to be reviewed.

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