



# Florida Elections Commission

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September 1, 2023

Andrew Brett  
739 NW 2nd Avenue  
Ft. Lauderdale, FL 33311

**RE: Case No.: FEC 22-182; Respondent: Andrew Brett**

Dear Mr. Brett:

The Florida Elections Commission at its last regularly scheduled meeting considered this case and entered the enclosed order. Please read the order carefully.

Please let me know if you have any questions or if I can be of any further assistance.

Sincerely,

*Donna Ann Malphurs*

Agency Clerk/Public Information Officer

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Enclosure: Executed Order

cc: Richard DeNapoli, Complainant

STATE OF FLORIDA  
FLORIDA ELECTIONS COMMISSION

Florida Elections Commission,  
Petitioner,

v.

Andrew Brett,  
Respondent.

Agency Case No.: FEC 22-182  
F.O. No.: FOFEC 23-223W

FINAL ORDER

THIS MATTER was heard at an informal hearing held before the Florida Elections Commission (Commission) on August 15, 2023.

**APPEARANCES**

For Commission	Stephanie J. Cunningham General Counsel 107 West Gaines Street Collins Building, Suite 224 Tallahassee, FL 32399
For Respondent	No Appearance

**STATEMENT OF THE ISSUE**

Whether Respondent violated Section 104.271(2), Florida Statutes, as alleged in the Order of Probable Cause.

**PRELIMINARY STATEMENT**

On August 4, 2022, the Commission received a sworn complaint alleging violations of Florida's election laws. On September 8, 2022, the Executive Director notified Complainant that

the complaint was legally insufficient. On September 22, 2022, Complainant filed additional complaint information, pursuant to Rule 2B-1.0025(5), Florida Administrative Code, which corrected the stated ground of insufficiency. Staff of the Commission conducted an investigation to determine whether the facts alleged in the sworn complaint constituted probable cause to believe that Respondent violated the Florida Election Code.

On November 22, 2022, staff recommended to the Commission that there was probable cause to believe that the Florida Election Code was violated. On June 5, 2023, the Commission entered an Order of Probable Cause finding that there was probable cause to charge Respondent with the following violation(s):

**Count 1:**

On or about August 4, 2020, Andrew Brett, violated Section 104.271(2), Florida Statutes, when he made or caused to be made a false statement about an opposing candidate with actual malice during an election.

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

**FINDINGS OF FACT**

1. Respondent was a 2020 candidate for Broward Republican State Executive Committeeman.
2. Complainant, Richard DeNapoli, was a 2020 candidate for Broward Republican State Executive Committeeman.
3. The election for Broward Republican State Executive Committeeman took place on August 18, 2020.

4. Respondent made or caused to be made the following statement: “In 2017, Richard DeNapoli ran a prostitution ring from his home and website pay for play, per a website search.”

5. The statement was made about an opposing candidate.

6. The statement was made multiple times between August 4, 2020, and August 17, 2020. The statement was distributed as an audio and video clip through email and posted on Facebook with links to YouTube.

7. The statement was made during an election.

8. Respondent admitted that he wrote the script for the video “The Truth About Richard DeNapoli” which contained the statement at issue and paid a third-party to produce it. Respondent admitted that he posted the video on Facebook and YouTube in late July or early August of 2020 and sent it to legislative members.

9. Respondent asserted that everything in the video was true and that he had documentation to support the statement at the time but lost it in storage.

10. The statement was false. Complainant vehemently denied the truth of the statement. Respondent was unable to produce any evidence showing that the statement was based in fact and cited his source initially as “per a website search.” Commission staff was unable to uncover any evidence in support of the statement being a factually true statement.

11. The statement was made or caused to be made with actual malice. Respondent made or caused to be made the statement with reckless disregard of whether the statement was true or false.

12. Respondent repeatedly asserted at the time of publication and two years later when the complaint was filed that the statement was true.

13. Respondent did not make or cause to be made the statement with knowledge that

the statement was false; however, the statement was made or caused to be made with reckless disregard of whether the statement was true or false.

14. Respondent made or caused to be made a false statement about an opposing candidate with actual malice during an election.

#### CONCLUSIONS OF LAW

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

16. The United States Supreme Court has held that “actual malice” requires a showing that the person making the defamatory statement made it with knowledge that the statement was false or with reckless disregard of whether the statement was true or false. N.Y. Times Co. v. Sullivan, 376 U.S. 254, 279-80 (1964). The Second District Court of Appeal clarified that a candidate need not investigate before publishing, but it must be shown that he entertained serious doubts as to the truth of the publication. Sharkey v. Fla. Elec. Comm’n, 90 So.3d 937, 939 (2012).

17. The U.S. Supreme Court requires that the finder of fact determine whether the publication was made in good faith and notes that the candidate cannot avoid liability by simply testifying that he published with a belief that the statements were true. St. Amant v. Thompson, 390 U.S. 727, 732 (1968). The Court stated that good faith is not persuasive when “based wholly on an unverified anonymous phone call,” nor will the candidate “be likely to prevail when the publisher’s allegations are so inherently improbable that only a reckless man would have put them in circulation.” Id.

18. Respondent made or caused to be made the statement with reckless disregard of whether the statement was true or false. While Respondent did not have a duty to investigate prior to publication nor does the evidence show that he entertained serious doubts as to the truth of the publication, the statement was not made in good faith. Respondent’s reliance on a “website search”

without more is akin to the “unverified anonymous telephone call” scenario. Additionally, the allegation that Complainant ran a prostitution ring from his home is so inherently improbable that only a reckless man would have put that statement into circulation. St. Amant v. Thompson, 390 U.S. 727, 732 (1968).

19. Respondent’s conduct was willful. Respondent committed the acts while knowing that, or showing reckless disregard for whether, the acts were prohibited, or failed to commit an act while knowing that, or showing reckless disregard for whether, the acts were required.

20. Respondent committed 1 count of violating Section 104.271(2), Florida Statutes, when he made or caused to be made a false statement about an opposing candidate with actual malice during an election.

21. In determining the amount of the civil penalty, the Commission considered the mitigating and aggravating circumstances set forth in Section 106.265, Florida Statutes.

### **ORDER**

The Commission finds that Respondent violated Section 104.271(2), Florida Statutes, on 1 occasion, and imposes a fine of \$5,000.

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Therefore, it is

**ORDERED** that Respondent shall remit a civil penalty in the amount of \$5,000, inclusive of fees and costs. The civil penalty shall be paid to the Florida Elections Commission, 107 West Gaines Street, Collins Building, Suite 224, Tallahassee, Florida 32399-1050, within 30 days of the date this Final Order is filed with the Commission.

**DONE AND ORDERED** by the Florida Elections Commission on August 15, 2023.



Tim Vaccaro, J.D., Executive Director  
For Joni Alexis Poitier, Vice Chair  
Florida Elections Commission

Copies furnished to:  
Stephanie J. Cunningham, General Counsel  
Andrew Brett, Respondent  
Richard DeNapoli, Complainant

**NOTICE OF RIGHT TO APPEAL**

This order is final agency action. Any party who is adversely affected by this order has the right to seek judicial review pursuant to Section 120.68, Florida Statutes, by filing a notice of administrative appeal pursuant to Rule 9.110, Florida Rules of Appellate Procedure, with the Clerk of the Florida Elections Commission at 107 West Gaines Street, Suite 224, Collins Building, Tallahassee, Florida 32399-1050 and by filing a copy of the notice of appeal with the appropriate district court of appeal. The party must attach to the notice of appeal a copy of this order and include with the notice of appeal filed with the district court of appeal the applicable filing fees. **The notice of administrative appeal must be filed within 30 days of the date this order is filed with the Commission.** The date this order was filed appears in the upper right-hand corner of the first page of the order.