

IN THE COMMISSION ON ETHICS AND  
PUBLIC TRUST, AN INDEPENDENT  
AGENCY AND INSTRUMENTALITY OF  
MIAMI-DADE COUNTY, FLORIDA  
33130

ETHICAL CAMPAIGN PRACTICES  
EXPEDITED HEARING PROCEDURE

CASE NO: C17-09

IN RE: CORAL GABLES ELECTION COMPLAINT

RALPH CABRERA,

Complainant

And

WAYNE ELMER "CHIP" WITHERS

Respondent/Candidate

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HEARING EXAMINER STATEMENT

This hearing was held to make a probable cause determination regarding an ethical campaign practices complaint. Probable cause is a preliminary determination regarding whether there is sufficient evidence to proceed to a full hearing. The probable cause hearing is conducted by a hearing examiner instead of the Ethics Commission. Each side has the opportunity to make a statement and present evidence. Rebuttal is permitted if time allows. Following the hearing, the hearing examiner makes a determination of probable cause or no probable cause. If probable cause is found, the matter will be referred to the Ethics Commission for a public hearing. If no probable cause is found, the case will be dismissed by the Ethics Commission. The Respondent may appeal.

Attorney, JC Planas, presented the case on behalf of Complainant, Ralph Cabrera.

There was no dispute that Respondent, Wayne Withers, agreed to be bound by the voluntary portion of the Fair Campaign Practices ordinance (VFCP). The issue for probable cause determination is whether Respondent violated Sections (11) of the VFCP. Complainant, Cabrera alleges that Respondent Withers sent a campaign mail flyer that falsifies, distorts, or misrepresents facts, because the flyer seeks to suggest to Coral Gables voters that he (Withers) has the official endorsement of Florida International University (FIU).

Respondent, Withers, argued that he had no intention to misrepresent or distort facts when he sent the campaign flyer. He further stated that he had no intent to use a personal endorsement from a friend, Mr. Modesto "Mitch" Maidique, for anything more than a personal endorsement.

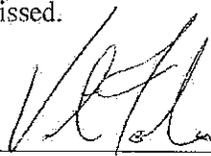
#### Finding of Fact

1. Respondent Withers is a candidate running for Coral Gables Commissioner, Group 3.
2. Respondent Withers did sign the declaration agreeing to be bound by the VFCP ordinance.
3. Maidique personally endorsed Withers.
4. Respondent Withers did mail a campaign flyer publicizing the endorsement provided by Maidique.
5. The quote from Maidique that was used in the flyer was accurate and truthful.
6. Maidique is identified in the flyer as the former president of FIU, and is a current professor at the university.
7. The FIU website did reveal an image that appears to be the image that was used as the backdrop for the flyer.
8. The image shows two buildings, one of which has the letters "FIU" at the top of the building.

#### Finding

I FIND NO PROBABLE CAUSE to show Respondent violated any section of the VFCP ordinance. Specifically, Complainant offered no evidence to prove that Respondent used or permitted the use of campaign material that falsified, distorted, or misrepresented facts.

No reasonable person would conclude that the flyer was an endorsement from Florida International University. Accordingly, this complaint should be dismissed.



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Victor Tobin  
Florida Bar # 176539  
Hearing Examiner  
Commission on Ethics  
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