

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT  
IN AND FOR PALM BEACH COUNTY,  
FLORIDA

CASE NO:

50 2007 CA 02 31 98 XXXX MB

NEIGHBORHOOD RENAISSANCE, INC.  
f/k/a NORTHWOOD RENAISSANCE, INC.  
A Florida Not For Profit Corporation,

Plaintiff,

vs.

THE CITY OF WEST PALM BEACH  
A municipal corporation, LOIS FRANKEL,  
and KIM BRIESEMEISTER,

Defendants.

COMPLAINT AND DEMAND FOR JURY TRIAL

COMES NOW the Plaintiff, NEIGHBORHOOD RENAISSANCE, INC.,  
NORTHWOOD RENAISSANCE, INC., (NORTHWOOD) and sues Defendants, CITY  
OF WEST PALM BEACH, (the CITY) LOIS FRANKEL, (FRANKEL) and KIM  
BRIESEMEISTER, (BRIESEMEISTER) and states<sup>1</sup>:

1) JURISDICTION AND VENUE

- 1) This is an action for damages in excess of fifteen thousand  
(\$15,000.00) dollars, exclusive of attorneys' fees and costs.
- 2) Plaintiff, NEIGHBORHOOD RENAISSANCE, INC., is a Florida not  
for profit corporation with its principal place of business located at 510 24<sup>th</sup> Street, Suite  
A, West Palm Beach, Florida.
- 3) Defendant, CITY OF WEST PALM BEACH, is a municipal corporation

<sup>1</sup> The statutory notice pursuant to F.S. 768.28 has been provided. See Exhibit "A".

AH

FILED

07 DEC 14 PM 3:36

SHARON R. BUCK, CLERK  
PALM BEACH COUNTY  
CIRCUIT CIVIL 7

CD4

located in Palm Beach County, organized and existing under the laws of the State of Florida.

4) Defendant, LOIS FRANKEL, is an individual over the age of eighteen who is otherwise *sui juris*. FRANKEL is a resident of Palm Beach County, Florida. At all times material hereto, FRANKEL was the Mayor of the City of West Palm Beach.

5) Defendant KIM BRIESEMEISTER is an individual over the age of eighteen who is otherwise *sui juris*. BRIESEMEISTER is a resident of Broward County, Florida. At all times material hereto BRIESEMEISTER was an employee of the CITY and was the Director of the West Palm Beach Community Redevelopment Agency (the CRA).

6) Unless specified to the contrary all acts complained of herein, and all tortious conduct specified herein, occurred in Palm Beach County, Florida.

## II) BACKGROUND

7) NORTHWOOD is a not for profit corporation whose primary mission is to re-develop the northern end of the City of West Palm Beach, in particular that area of the city known generally as the Northwood neighborhood which lies to the north of 24<sup>th</sup> Street, between the Intracoastal Waterway and Lake Mangonia. The area is a prime location encompassing blocks of rehabilitated historic homes and located in close proximity to the water and Currie Park. However, for years efforts to rehabilitate the Northwood neighborhood have been mixed. Particularly in those areas directly bordering the Broadway corridor, Northwood continues to display the substandard housing and lack of businesses which characterized the entire neighborhood in the 1980's and early 90's.

8) It is in this area where NORTHWOOD has focused the majority of its

efforts. After conducting a study and obtaining information directly from the residents of the area, and basing its decisions on the resulting information, NORTHWOOD began focusing on two projects. The first would become known as the "Anchor Site", comprising approximately four acres bounded by Northwood Road, Broadway, 25<sup>th</sup> Street, and the FEC Railway. At this location, in response to resident's stated desire for nearby shopping, NORTHWOOD planned a retail and residential complex anchored by a chain supermarket such as Publix. The second site became known as Village Centre, and was located between 24<sup>th</sup> and 25<sup>th</sup> Streets, in between Broadway and Spruce Street.

9) Village Centre was designed as an affordable housing rental project. Beginning with the housing boom in early 2000, South Florida's housing market experienced a significant loss of rental inventory. Consequently, many middle and lower income renters found themselves squeezed out of the rental market. Moreover, as the boom progressed and the value of residential real estate began to rise, home ownership for many of these same individuals strayed farther and farther out of reach.

10) The problem became so significant that public and private employers began to complain that their employees were simply unable to live in the cities and counties where they worked. Palm Beach County and the City of West Palm Beach in particular were experiencing this problem.

11) However, what was a bane to lower and middle income families was a boon to the construction and development industries. In places like West Palm Beach, high rise, high end condominiums sprouted like weeds along Flagler Drive and elsewhere within the City. An ever rising housing market meant profits for the developers and construction companies building such projects.

12) The residential real estate bubble was also a boon to local politicians.

Every project – major and minor – required the approval of local municipal corporations like West Palm Beach, and in many instances these projects also required variances and exceptions which could only be granted by the City.

13) Over time, a quiet system of influence peddling evolved. Developers and construction companies began making considerable donations to local politicians, including Defendant FRANKEL. Many of these donations were “bundled”, i.e. the primary benefactor, often a large developer, would secure additional donations from corporate officers, employees, and/or contractors, all of which would flow to the benefit of the same politician. Due to the fact that the donations came from ostensibly separate sources, legal limits on campaign contributions could thereby be circumvented.

14) While this system worked well for the for-profit developers seeking the expedition of projects, as well as for politicians like FRANKEL, it had the effect of freezing out not-for-profit entities like NORTHWOOD who lacked the financial resources to purchase the political patronage necessary to usher a building project through CITY government.

**III) DEFENDANTS' FRANKEL AND BRIESEMEISTER'S EFFORTS TO  
DERAIL THE NORTHWOOD ANCHOR SITE AND VILLAGE CENTRE  
PROJECTS**

15) In late 2004, the City hired Defendant BRIESEMEISTER as Director of the City's Community Redevelopment Agency. BRIESEMEISTER'S hiring was in part contingent upon the approval of commissioner RAY LIBERTI, and BRIESEMEISTER shared FRANKEL'S penchant for for-profit developers and their deep pockets.

16) By late 2004, NORTHWOOD had spent considerable time and expense

purchasing and obtaining options to purchase lots within the Village Centre and Anchor sites. NORTHWOOD'S property interests in those locations were an obstacle to using the sites for development as high end residential housing – the very type of development which had been so beneficial to local politicians, including Defendant FRANKEL.

17) Together, LIBERTI, BRIESEMEISTER, and FRANKEL would soon launch a concerted attack on NORTHWOOD'S plans for the sites, in part by attacking its property interests therein.

18) In late 2004, BRIESEMEISTER met with NORTHWOOD'S Directors and/or employees and demanded that they show a for-profit developer, JERRY MINTZ, redevelopment sites in the Northwood Business District. BRIESEMEISTER indicated that MINTZ was a preferred developer because she had worked with him in the past and "could control him". MINTZ had been involved in other projects within CRA districts managed by BRIESEMEISTER in Hollywood, Florida.

19) At a subsequent meetings and conversations, MINTZ indicated to NORTHWOOD that he was interested in purchasing and developing the Anchor Site and the Village Centre property.

20) By December of 2004, BRIESEMEISTER was publicly supporting a redevelopment plan for the Anchor Site put forth by MINTZ and another for-profit developer STEVEN BERMAN. Like MINTZ, BERMAN had previously been involved with BRIESEMEISTER in development, working with the City of Hollywood's CRA during her Directorship there. With the exception of a planned supermarket, MINTZ and BERMAN'S redevelopment plan did not significantly differ from the plans NORTHWOOD had long been working on.

21) Defendant FRANKEL'S position on the potential placement of a supermarket on the Anchor Site underwent a dramatic reversal around the same time. Previously, FRANKEL had supported the idea, and in fact had introduced NORTHWOOD to the RMC Group, an experienced developer of over 20 Publix Supermarkets. FRANKEL was aware of NORTHWOOD'S advantageous relationship with the RMC GROUP, and knew that NORTHWOOD had entered into a letter of understanding with RMC in November of 2004 for a joint venture to redevelop the Anchor Site into a mixed use project anchored by a major supermarket chain and containing 98 residential units.

22) FRANKEL and BRIESEMEISTER began a concerted effort to discourage RMC from proceeding with the project. BRIESEMEISTER contacted RMC telephonically and engaged in a conversation that RMC would later only describe as being, "not positive". For her part, FRANKEL made public statements asserting that a supermarket would be brought to the site, "over my dead body..."

23) FRANKEL and BRIESEMEISTER'S conduct had its intended effect. In February of 2005 RMC informed NORTHWOOD that it was no longer interested in a joint venture to redevelop the site.

24) However, NORTHWOOD'S property rights in the Anchor Site, including options for the purchase of additional lots within the Site still stood as an impediment to FRANKEL and BRIESEMEISTER'S ability to offer up the property to a "preferred" for-profit developer. As a result, on February 14, 2005 BRIESEMEISTER sought the approval of the CRA Board to use its powers of eminent domain to take NORTHWOOD'S property interests in the Site.

25) FRANKEL also used political pressure to clear NORTHWOOD from the Anchor Site. On February 28, 2005, FRANKEL vetoed a City Commission's approval of a contract extension for NORTHWOOD'S Model Block II, a popular housing program for first time homebuyers. FRANKEL indicated that her veto could be reversed if NORTHWOOD agreed to assign certain contract interests in property located in the Anchor Site to the CRA. When the linkage of the two issues was objected to, FRANKEL indicated "... it's all related. It's politics."

26) On March 10, 2005 a meeting was held between NORTHWOOD and FRANKEL to resolve the Anchor Site issues. At that meeting FRANKEL and NORTHWOOD agreed that NORTHWOOD would assign its property interests in the Anchor Site to the CRA in exchange for the active support, including financial support, of the CRA and the CITY in completing development of the Village Centre site. FRANKEL was clear that in exchange for the assignment, the Village Centre project would move forward.

27) NORTHWOOD did in fact assign its interests, relying upon FRANKEL'S promise that this would result in active support from FRANKEL, the CITY, and the CRA for the development of the Village Centre project.

28) NORTHWOOD'S demand for that support was predicated on a perceived necessity: just as BRIESEMEISTER had made a concentrated effort to derail the Anchor Site, BRIESEMEISTER had made clear her desire to prevent NORTHWOOD from proceeding on the Village Centre site.

29) In January of 2005 BRIESEMEISTER publicly indicated that she did not

support the Village Centre project. BRIESEMEISTER was also instrumental in withholding \$400,000.00 in committed project funding from NORTHWOOD during the same time frame.

30) NORTHWOOD had also received indications about BRIESEMEISTER'S intentions from BRIESEMEISTER'S "preferred" developer MINTZ. MINTZ had indicated in private meetings with NORTHWOOD during December of 2004 that NORTHWOOD should sell its interests in the Village Center Site because BRIESEMEISTER had informed him that she did not support the Village Center project and that it would "never get built".

31) In May of 2005, NORTHWOOD'S agents met with BRIESEMEISTER. During that meeting, BRIESEMEISTER indicated that NORTHWOOD'S Village Centre project would not proceed unless NORTHWOOD agreed to build a parking garage on the site. NORTHWOOD agreed in good faith to construct such a garage if the CRA agreed to pay for the increased cost. BRIESEMEISTER agreed that the CRA would do so.

32) In reliance upon BRIESEMEISTER'S commitment to have the CRA provide the funding NORTHWOOD, in good faith and at considerable expense, redesigned the Village Centre project to include a parking garage. Almost immediately BRIESEMEISTER backtracked, indicating that funding for the parking garage was not certain and that the CRA had to "mull it's options". Ultimately, funding for the garage was not forthcoming as agreed.

33) In a similar manner, beginning in December of 2005, BRIESEMEISTER recommended to the CRA board that NORTHWOOD sell its interests in the Village Centre project to a private, for-profit developer who would develop the site as a for sale



mixed-use residential condominium project, a retail only project, or a retail and office space project. This recommendation was completely at odds with both FRANKEL'S prior promise that the CITY and the CRA would support the Village Centre project in its existing form as mixed-used affordable rental housing and retail. At the end of the meeting FRANKEL, contrary to the promises made when she obtained NORTHWOOD'S interests in the Anchor Site, directed NORTHWOOD to meet with BRIESEMEISTER and work out a "compromise" which would address FRANKEL and BRIESEMEISTER'S objections regarding parking, reducing the density of the project, and providing for ownership as opposed to rental housing. Again, the promises from FRANKEL and BREISEMEISTER were clear: if NORTHWOOD were to redesign the project to contain for sale condominiums as opposed to rental units, support and approval of the project would be forthcoming.

34) At the time that FRANKEL and BREISEMEISTER demanded that the project be changed from a rental development to a condominium development, both were aware that NORTHWOOD had received an award of tax credits from the Florida Housing Finance Corporation worth approximately \$10,000,000.00. FRANKEL and BREISEMEISTER were also aware that in order to obtain the credits, the Village Centre project had to be completed and the buildings in service by December 31, 2007. FRANKEL and BRIESEMEISTER were also aware that the tax credits had been awarded for a rental project and not a for sale condominium project. FRANKEL and BREISEMEISTER were both aware that, by requiring what was essentially a re-design of the entire Village Centre project, they would require NORTHWOOD to surrender the tax credits.

35) To date, despite NORTHWOOD'S good faith efforts to redesign the project and obtain the necessary approvals, the Village Centre project remains mired in a bureaucratic maze and construction has yet to begin.

#### **IV) FRANKEL'S EFFORTS TO EXTORT NORTHWOOD**

36) Defendant FRANKEL has a long history of speaking out of both sides of her mouth, a habit common among politicians. On the one hand, FRANKEL publicly purports to support affordable housing. On the other hand, FRANKEL has also indicated that such housing should be located in Westgate or Belle Glade, not West Palm Beach. However FRANKEL'S conduct as it relates to NORTHWOOD goes far beyond simple political expediency.

37) A review of FRANKEL'S publicly filed Campaign Treasurer's Summaries reflects that the majority of the funds in FRANKEL'S political war chest are obtained from developers and their related professionals and entities in the legal, real estate, and construction industries.

38) As noted in a Grand Jury report issued in February of 2007, many of these donations are "bundled" in order to avoid a statutory limit of \$500.00 for such contributions. As noted in that same report, many of these contributions are made at a time when the contributors have business with the City and are expecting key decisions from FRANKEL'S administration on various issues related to construction projects within the City.

39) By July of 2006, NORTHWOOD had become increasingly concerned

about the differences in the treatment it was receiving when compared to the treatment of for-profit developers whose pockets were deep enough to make a positive impact on FRANKEL'S war chest.

40) As a result, officers and agents of NORTHWOOD approached State Representative MARY BRANDENBURG, who had been appointed by FRANKEL to a CITY Ethics Commission. NORTHWOOD requested a meeting to voice their concerns regarding the perceived mistreatment.

41) A meeting was held at NORTHWOOD'S office and lasted approximately two hours. While the officers and agents of NORTHWOOD expected to meet with BRANDENBURG, as a representative of the CITY'S Ethics Commission, they soon learned that they were meeting with an agent of FRANKEL.

42) During the meeting BRANDENBURG indicated that NORTHWOOD was an "outsider" and needed to become an "insider". BRANDENBURG insisted that she could set up a meeting between FRANKEL and NORTHWOOD'S agents, a suggestion which was surprising given the parties' acrimonious history. BRANDENBURG had done her research and was familiar with campaign contributions made by NORTHWOOD'S agents in the past.

43) Not only did BRANDENBURG purport to have the knowledge and control of FRANKEL'S schedule needed to set up such a meeting, she purported to know exactly how NORTHWOOD could keep the Village Centre project moving. BRANDENBURG indicated in no uncertain terms that NORTHWOOD needed to show an "appreciation" for FRANKEL by bringing a checkbook and making a campaign contribution. NORTHWOOD refused the offer.

**COUNT I**  
**FRAUDULENT INDUCEMENT AGAINST**  
**DEFENDANT FRANKEL**

44) The allegations at paragraphs one (1) through fourteen (14), twenty one (21), through twenty three (23), twenty five (25), twenty six (26), twenty seven (27) and thirty six (36) through forty three (43) are realleged and incorporated herein.

45) FRANKEL'S promise to NORTHWOOD to provide it with the support necessary to see the Village Centre project through to completion was a material inducement and was intended by FRANKEL to encourage NORTHWOOD to surrender its interests in the Anchor Site.

46) At the time the promise was made, FRANKEL knew that it was false and that she had no intention of supporting the Village Centre project. In fact, after inducing NORTHWOOD to assign its interests in the Anchor Site, FRANKEL made comments, both publicly and in private, to the effect that affordable housing in Palm Beach County should be located in Belle Glade and Westgate.

47) NORTHWOOD did in fact rely upon FRANKEL'S promise in making the decision to assign its interests in the Anchor Site to the CRA.

48) NORTHWOOD'S reliance was detrimental to NORTHWOOD'S interests. In surrendering its interests in the Anchor Site, NORTHWOOD lost over four million (\$4,000,000.00) dollars in fees, profit, and revenue which would have otherwise accrued to it from the project. In addition, NORTHWOOD had invested time and effort in attempting to develop the site, all of which was effectively lost. This and other detrimental reliance, would not have occurred but for FRANKEL'S false and material inducements.

49) As a legal and proximate result of its reliance NORTHWOOD has been damaged.

50) FRANKEL'S conduct in misleading NORTHWOOD was in reckless disregard of NORTHWOOD'S rights, and was a malicious and willful attempt to damage NORTHWOOD.

WHEREFORE, NORTHWOOD demands trial by jury, judgment for damages against Defendant FRANKEL, and such further and other relief as the Court deems just and necessary. NORTHWOOD reserves its right pursuant to F.S. § 768.72 to amend this Count to include a claim for punitive damages.

**COUNT II**  
**BREACH OF CONTRACT AGAINST DEFENDANT**  
**CITY OF WEST PALM BEACH**

51) The allegations at paragraphs one (1) through fourteen (14), twenty six (26) and twenty seven (27), are realleged and incorporated herein.

52) At all times material hereto, FRANKEL acted within the course and scope of her duties as the Mayor of the City of West Palm Beach, and acted as the real and apparent agent of the Defendant CITY.

53) During the March 10, 2005 meeting between NORTHWOOD and FRANKEL, FRANKEL offered to provide the support of the CITY for the Village Centre project in exchange for NORTHWOOD'S agreement to abandon its interests in the Anchor Site and its assignment of those interests to the CRA.

54) NORTHWOOD provided good and valuable consideration for the CITY'S

promise, made through its agent FRANKEL, by assigning it's interests in the Anchor Site.

55) Subsequent to receiving that assignment, the CITY breached its agreement by, inter alia: failing to actively support the construction of the Village Centre project, demanding that the Village Centre project be changed dramatically from an affordable housing rental project to a for sale condominium project, demanding that Village Centre add a parking garage to the project, delaying the project to the point where NORTHWOOD lost tax credits worth approximately \$10,000,000.00, and generally obstructing the progress of the project.

56) As a legal and proximate result of the CITY'S breach, NORTHWOOD has suffered damages above and beyond the lost tax credits including, but not limited to, additional expenses incurred to redesign the project as a condominium, lost fees and profits, and additional administrative expenses and overhead. These damages are estimated to be in excess of \$6,000,000.00.

WHEREFORE, NORTHWOOD demands trial by jury, judgment for damages against the Defendant CITY OF WEST PALM BEACH, and such further and other relief as the Court deems just and necessary.

**COUNT III**  
**PROMISSORY ESTOPPEL AGAINST THE**  
**DEFENDANT, CITY OF WEST PALM BEACH**

57) The allegations at paragraphs one (1) through fourteen (14), twenty six (26) and twenty seven (27), are realleged and incorporated herein.

58) At all times material hereto FRANKEL acted within the course and scope

of her duties as the real and apparent agent for the Defendant CITY.

59) FRANKEL represented to NORTHWOOD that, in exchange for an assignment of its interests in the Anchor Site, the CITY would support the Village Centre project.

60) The CITY, acting through its agent FRANKEL, reasonably should have expected that NORTHWOOD rely upon its promise of support in deciding to assign its interests in the Anchor Site to the CITY.

61) NORTHWOOD did in fact reasonably rely on the representations made by the CITY through its agent FRANKEL to its detriment.

62) As a legal and proximate result of its detrimental reliance, NORTHWOOD has suffered damages including, but not limited to, the loss of its interests in the Anchor Site. Under these circumstances it would be unjust and unfair to permit the CITY to retain the beneficial interests it received while simultaneously permitting the CITY to avoid the obligations under the representations made to obtain NORTHWOOD'S interests.

WHEREFORE, NORTHWOOD demands trial by jury, judgment for damages against the Defendant, CITY OF WEST PALM BEACH, and such further and other relief as the Court deems just and necessary.

**COUNT IV**  
**BREACH OF IMPLIED COVENANT OF GOOD FAITH**  
**AND FAIR DEALING**

63) The allegations at paragraphs one (1) through forty three (43) are realleged and incorporated herein.

64) At the time NORTHWOOD agreed to assign its interests in the Anchor

Site to the CRA, FRANKEL and the CITY understood that NORTHWOOD'S primary purpose in doing so was to secure their cooperation in completing the Village Centre project, and its reasonable expectations were that such support and cooperation would be forthcoming.

65) The March 10, 2005, agreement between NORTHWOOD and the CITY gave the CITY considerable discretion as to how it would support the Village Centre project and move it to completion.

66) The CITY, acting through its agents, including but not limited to, FRANKEL, BRIESEMEISTER, and LIBERTI, breached the implied covenant of good faith and fair dealing by, *inter alia*, publicly suggesting that Village Centre and other affordable housing projects should be located in Westgate and Belle Glade, demanding that NORTHWOOD dramatically change the nature of the project in order to obtain approval and/or funding, interfering with NORTHWOOD'S partners in the project, and demanding that a campaign contribution be made by NORTHWOOD prior to, and as a condition of, the project moving forward.

67) As a legal and proximate result of the CITY'S breach of its implied covenant of good faith and fair dealing, NORTHWOOD has suffered damages, including but not limited to, lost profits and fees, increased administrative and professional costs, and lost opportunity costs.

WHEREFORE, the Plaintiff demands trial by jury, judgment against the Defendant CITY OF WEST PALM BEACH for damages, and such further and other relief as the court deems just and necessary.

**COUNT V**  
**FRAUDULENT INDUCEMENT AGAINST**



**DEFENDANT KIM BRIESEMEISTER**

68) The allegations at paragraphs one (1) through fourteen (13) and thirty one (31) through thirty five (35) are reallaged and incorporated herein.

69) During the May 2005 meeting, BRIESEMEISTER demanded that NORTHWOOD build a parking garage into its project, and represented that if NORTHWOOD did so then the CRA would fund the additional costs.

70) BRIESEMEISTER knew at the time she made the representation that it was false, but intended that NORTHWOOD would rely upon the representation. BRIESEMEISTER also understood that NORTHWOOD was under considerable time restraints due to the requirements that the project's units be in service by December of 2007, and that the redesign of the project would require additional time and further delay to NORTHWOOD'S detriment.

71) NORTHWOOD did in fact reasonably rely upon the misrepresentations made by BRIESEMEISTER to its detriment.

72) As a legal and proximate result thereof, NORTHWOOD has suffered damages.

73) BRIESEMEISTER'S conduct was in reckless disregard of NORTHWOOD'S rights, and was a malicious and willful attempt to damage NORTHWOOD. BRIESEMEISTER'S ultimate goal was to force NORTHWOOD into a position where it was forced to abandon its' interests in the Village Centre site.

WHEREFORE, the Plaintiff demands trial by jury, judgment for damages against Defendant BRIESEMEISTER, and such further and other relief as the court deems just

and necessary. Plaintiff further reserves the right to amend this count to add a claim for punitive damages pursuant to F.S. § 768.72.

**COUNT VI**  
**BREACH OF CONTRACT AGAINST THE DEFENDANT**  
**CITY OF WEST PALM BEACH**

74) The allegations in paragraphs one (1) through fourteen (14) and thirty one (31) through thirty five (35) are realleged and incorporated herein.

75) At all times material hereto, BRIESEMEISTER was acting in her capacity as an employee of the CITY.

76) In May of 2005 BRIESEMEISTER offered that the CITY, through the CRA, would fund the additional costs incurred in building the structure.

77) NORTHWOOD accepted that offer by, *inter alia*, making the necessary changes to the plans for Village Centre.

78) The CITY thereafter breached the agreement by refusing to fund the additional costs related to the construction of the garage.

WHEREFORE, the Plaintiff demands trial by jury, judgment for damages against the Defendant CITY OF WEST PALM BEACH and such further and other relief as the Court deems just and necessary.

**COUNT VII**  
**PROMISSORY ESTOPPEL AGAINST**  
**DEFENDANT CITY OF WEST PALM BEACH**

79) The allegations at paragraphs one (1) through fourteen (14) and thirty one (31) through thirty five (35) are realleged and incorporated herein.

80) At all times material hereto, BRIESEMEISTER acted within the course and scope of her duties as an employee of the CITY and the Director of the CRA.

81) BRIESEMEISTER represented to NORTHWOOD that if it redesigned the Village Centre project to include a parking garage, then the CRA would pay for the additional costs incurred in building the structure.

82) The CITY, acting through its agent BRIESEMEISTER, should have reasonably expected that NORTHWOOD would rely upon this representation.

83) NORTHWOOD did in fact rely upon this representation to its detriment by undertaking to change the design of the project to include a garage, and by incurring the additional delays caused thereby.

84) As a legal and proximate result of its detrimental reliance, NORTHWOOD has been damaged. It would be unjust under these circumstances to permit the CITY to avoid the obligations it would have incurred had it stood by its representation to pay for the costs of the garage.

WHEREFORE, the Plaintiff demands trial by jury, judgment for damages against the Defendant CITY, and such further and other relief as the Court deems just and necessary.

**COUNT VIII**  
**FLORIDA CIVIL RICO CLAIM**  
**PURSUANT TO F.S. § 772.104**  
**AGAINST DEFENDANTS FRANKEL AND BRIESEMEISTER**

85) The allegations of paragraphs one (1) through forty three (43) are hereby incorporated and realleged herein.

86) At all times material hereto Defendants FRANKEL and BRIESEMEISTER, in violation of F.S. § 772.103, had formed an association in fact and engaged in a pattern of criminal activity, along with third parties LIBERTI and BRANDENBURG.

87) At its most basic level, the enterprise had as its purpose and central business the sale of political influence, approvals, and support relating to development projects and the sale and purchase of real estate.

88) In violation of F.S. § 838.014 et. seq., FRANKEL, BREISEMEISTER, LIBERTI and BRANDENBURG misused their official positions in an attempt to obtain benefits for themselves and persons whose welfare they were interested in, all in violation of Florida law.

89) BREISEMEISTER repeatedly attempted to use her influence to secure the Anchor Site and the Village Centre site for the benefit of private developers, including but not limited to, JERRY MINTZ.

90) In fact, MINTZ was so confident of BRIESEMEISTER'S influence and her ability to prevent NORTHWOOD from completing its plans that he bragged to NORTHWOOD that the Village Centre project would "never be built".

91) For her part, BREISEMEISTER was an experienced CRA Director who understood that it would be difficult, if not impossible, for the Village Centre project to be completed without the tax credits NORTHWOOD had been awarded. BRIESEMEISTER also understood that if NORTHWOOD did not meet the required in service dates, it would lose the tax credits.

92) Consequently with the support and encouragement of FRANKEL and LIBERTI, BRIESEMEISTER engaged in a pattern of conduct whereby she would demand changes to the Village Centre project, fraudulently promising that if the requested changes, including a parking garage and for-sale units, were included the project it would receive the support and assistance of the CRA.

93) Once the demanded changes had been made and a delay obtained, BRIESEMEISTER would renege on the false promises and/or make different or additional demands all in an effort to stall the project to the point where the tax credits had to be surrendered by NORTHWOOD.

94) In a further effort to derail the projects, BRIESEMEISTER made false statements and reports to the CRA Advisory Board, misleading the Board about matters such as NORTHWOOD'S experience in retail development and its track record, the infrastructure and utility requirements for the project, and generally poisoning the CRA Advisory Board to the point where it was openly hostile to NORTHWOOD.

95) In a similar manner FRANKEL defrauded NORTHWOOD by promising that in exchange for an assignment of its interests in the Anchor Site, she would actively support the completion of the Village Centre project. FRANKEL knew at the time this was a false misrepresentation, and once the assignment had been made continued her efforts to derail the project.

96) FRANKEL also attempted to extort a campaign contribution through her Agent BRANDENBURG, conditioning her support of the Village Centre project on the payment of that contribution.

97) LIBERTI similarly attempted to derail the Village Centre project, and during the years 2004 and 2005 sent multiple false and slanderous e-mails to community leaders in an effort to achieve this end.

98) LIBERTI conditioned BRIESEMEISTER'S hiring by the CITY on a private meeting between himself and BREISEMEISTER, and once she was hired supported her efforts to prevent the development of Village Centre. In fact, LIBERTI sat

on the CRA Board, and in February of 2006 threatened NORTHWOOD that it had two choices: either to institute the changes to the project demanded by BREISEMEISTER, or else to commence litigation.

99) LIBERTI'S subsequent arrest and guilty plea on Federal mail fraud and obstruction of justice charges involved a scheme similar to the one at issue here, that is the use of his position to compel an existing property owner to abandon their property interests and turn those interests over to persons whose welfare he was interested in.

100) As a legal and proximate result of Defendant FRANKEL and BRIESEMEISTER'S violations of F.S. § 772.103 and F.S. §§. 838.104-022, NORTHWOOD has been damaged and has a cause of action under F.S. § 772.104.

WHEREFORE, the Plaintiff demands trial by jury, judgment for damages against Defendants FRANKEL and BRIESEMEISTER, including treble damages as permitted by F.S. § 772.104(1), and such further and other relief as the court deems just and necessary.

By: 

Bernard A. Lebedeker  
Fla. Bar No. 0042950  
BURMAN, CRITTON, LUTTIER &  
COLEMAN  
Attorneys for NORTHWOOD  
Florida Bar No: 0042950  
515 North Flagler Drive, Suite 400  
West Palm Beach, FL 33401  
Telephone: (561) 842-2820



**BURMAN, CRITTON, LUTTIER  
& COLEMAN LLP**

A LIMITED LIABILITY PARTNERSHIP

J. MICHAEL BURMAN, P.A.<sup>1</sup>  
GREGORY W. COLEMAN, P.A.  
ROBERT D. CRITTON, JR., P.A.<sup>1</sup>  
GEORGE C. GASKELL, III  
BERNARD LEBEDEKER  
MARK T. LUTTIER, P.A.  
JEFFREY C. PEPIN  
MICHAEL J. PIKE  
HEATHER McNAMARA RUDA

<sup>1</sup> FLORIDA BOARD CERTIFIED  
CIVIL TRIAL LAWYER

ADELQUI J. BENAVENTE  
PARALEGAL / INVESTIGATOR

MARY LAGNADO, CLA  
BARBARA M. McKENNA  
ELIANA PUTNEY  
BETTY STOKES  
PARALEGALS

RITA H. BUDNYK  
OF COUNSEL

December 14, 2007

**SOVERIEGN IMMUNITY NOTICE  
REGULAR & CERTIFIED MAIL  
RETURN RECEIPT REQUESTED**

Mayor Lois Frankel  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

Molly Douglas  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

Isaac Robinson  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

Kimberly Mitchell  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

Jerry Muoio  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

William Moss  
200 2<sup>nd</sup> St.  
West Palm Beach Fl. 33401

Dear Ladies and Gentlemen;

Please be advised that our firm has been retained to represent Neighborhood Renaissance, Inc. t/k/a Northwood Renaissance, Inc. in all matters referenced in the complaint attached hereto.

in accordance with Florida Statute §768.28(6)(a) and any and all applicable statutes or

L · A · W · Y · E · R · S

515 N. FLAGLER DRIVE / SUITE 400 / WEST PALM BEACH, FLORIDA 33401

TELEPHONE (561) 842-2820 FAX (561) 844-6929

mail@bclclaw.com



appellate decisions, please accept this as an appropriate notice of claim on behalf of the above-named client.

There are no prior adjudicated unpaid claims in excess of \$200, with reference to our client.

Please be advised that we intend to pursue our clients' rights in accordance with all available legal remedies. If you wish for any further information, please contact the undersigned. Further, if a claim's representative wishes to discuss this matter with me, I will be more than happy to discuss same.

As stated above, this letter shall serve as formal notice upon the appropriate persons that it is our client's position that (1) There exists a civil action against the above-stated parties, rising out of the above facts (2) The Defendants named in the attached complaint a legal duty to refrain from destruction and to preserve evidence which is relevant to our client's civil actions; (3) The failure to meet such duty may constitute a significant impairment in our client's ability to prove a civil action; and (4) Should the foregoing occur, our client will suffer damages. In the event that any such evidence is destroyed and/or changed or not preserved, the appropriate sanctions may be imposed, adverse of our entering an appearance and/or separate cause of action.

Therefore, please govern yourself accordingly. We thank you for your anticipated cooperation and assistance in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Bernard Lebedeker', with a stylized, cursive script.

Bernard Lebedeker, Esq.



DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA  
FOURTH DISTRICT  
*July Term 2006*

**CAROLYN J. WRIGHT, MICHAEL BORNSTEIN, ANITA MITCHELL,  
GLADYS D. VAN OTTEREN, and PATRICIA M. HIGH,**  
Appellants,

v.

**LOIS FRANKEL**, as mayor of City of West Palm Beach, a municipality of  
the State of Florida; **ISAAC ROBINSON, JR.; GERALDINE MUOIO;  
JAMES EXLINE; KIMBERLY MITCHELL;** and **WILLIAM MOSS**, as city  
commissioners of the City of West Palm Beach, a municipality of the  
State of Florida, and **CITY OF WEST PALM BEACH**, a municipality of  
the State of Florida,  
Appellees.

Nos. 4D06-3386 & 4D06-3697

December 27, 2006

STONE, J.

This appeal arises from an order quashing an alternative writ of mandamus and denying a motion for summary judgment. The writ was sought to compel the city of West Palm Beach (City) to place a petition committee's (Committee) proposed initiative on the ballot. The primary issue presented is whether the trial court abused its discretion in determining that laches barred the mandamus action. We affirm.

Beginning in July 2002, a series of resolutions were passed by the city commission relating to the development of a city center area ("City Center"). On September 7, 2002, City passed resolutions determining that the county property on Banyan Boulevard was a suitable location for a new city hall and authorizing an expenditure of \$1,138,000 for the acquisition of the land.

From November 2002 until November 2003, City passed more resolutions, including authorizing a request for proposals to develop the property and setting forth its intention to acquire other properties for the development. On November 18, 2003, City passed a resolution authorizing the relocation of the library; the resolution indicated that

City held a public forum to receive input regarding the location of the library, and the majority opinion at that forum supported the relocation.

Subsequent resolutions of the West Palm Beach Community Redevelopment Agency (CRA) authorized expenditures for City Center development in the amounts of \$16,115,400, \$17,670,000, \$19,490,000, \$155,000, and \$1,635,000. On February 3, 2004, City passed a resolution authorizing the issuance of a request for proposals for a developer to design and build city hall and the library on property known as the D&D block, proposed to be known as City Center. On October 12, 2004, CRA passed a resolution authorizing two expenditures, each in the amount of \$585,000. CRA also passed a resolution authorizing its chair to enter into an agreement with Republic Properties Corporation ("Republic") for designing and developing City Center. On January 3, 2005, City authorized \$2,900,000 in expenditures for the city commons and waterfront construction fund. On March 28, 2005, CRA passed a resolution amending City Center construction and operation funds, authorizing expenditures in the amounts of \$1,188,268 and \$650,000. On November 7, 2005, CRA approved the City Center strategic finance plan and the implementation of said plan. On March 13, 2006, CRA passed a resolution authorizing expenditures of \$405,000. Also on this date, CRA passed a resolution authorizing amendment of the agreement with Republic to provide for the demolition of the structures on the existing site. On June 26, 2006, CRA passed a resolution authorizing its chair to execute an agreement with Catalfumo Management Investments Inc. for completion of City Center. Additional resolutions appear in the record relating to completion of City Center.

Relevant portions of the city charter are as follows:

## ARTICLE VI. INITIATIVE AND REFERENDUM

### **Sec. 6.01. Power of initiative.**

The electors may propose any ordinance . . . and may adopt or reject it at the polls. . . . Any initiated ordinance may be submitted to the City Commission by petition. . . .

### **Sec. 6.02. Power of referendum**

. . . Within thirty (30) days after enactment of an ordinance, a petition signed by at least (5) percent of the City electors as shown by the current voter registration lists may be filed

with the City Clerk requesting that the ordinance be either repealed or submitted to vote of the electors.

**Sec. 6.07. Consideration by City Commission**

The City Commission shall proceed forthwith to consider any certified initiative or referendum petition received from the City Clerk. In considering an ordinance proposed by initiative petition, the City Commission shall follow the same procedural requirements for passage that are prescribed hereby for ordinances generally, including public hearing thereon, and the City Commission shall take final action thereon not later than thirty (30) days after the date of submission thereof to it. . . .

**Sec. 6.08. Submission to electors.**

If the City Commission fails to pass an ordinance proposed by initiative petition or passes it in a form different from that set forth in the petition . . . the proposed or referred ordinance shall be submitted to the electors in its original form not less than thirty (30) days nor more than ninety (90) days after the final vote thereon by the City Commission. The City Commission may provide for a special election, and it shall so provide if no regular election is to be held within this period.

On May 16, 2006, Committee filed a petition for initiative ordinance on the relocation of city hall, which provided, in pertinent part,

**INTRODUCTION:**

**. . . THE BELOW LISTED PETITION COMMITTEE PROPOSES THAT THE FOLLOWING ORDINANCE BE SUBMITTED TO THE CITY COMMISSION PURSUANT TO ARTICLE 6 OF THE CITY CHARTER. THE SUMMARY AND FULL TEXT OF THE PROPOSED ORDINANCE IS AS FOLLOWS:**

**SUMMARY AND FULL TEXT OF PROPOSED ORDINANCE:**  
**AN ORDINANCE OF THE CITY OF WEST PALM BEACH REQUIRING A REFERENDUM BY THE VOTERS OF THE CITY OF WEST PALM BEACH BEFORE CITY HALL CAN BE RELOCATED TO ANOTHER SITE, PROVIDING FOR**

**REPEAL OF LAWS IN CONFLICT, PROVIDING FOR SEVERABILITY AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City Hall of the City of West Palm Beach and the property upon which it is situated is a valuable and historical asset and resource of the City;

WHEREAS, any decision to relocate the City Hall is a decision that will greatly impact the voters and residents of the City of West Palm Beach;

WHEREAS, the voters of the City of West Palm Beach should decide where their city government should operate and conduct business;

\*\*\*

NOW, THEREFORE, BE IT ORDAINED BY THE COMMISSION OF WEST PALM BEACH, FLORIDA:

\*\*\*

Section 2. Referendum Vote: The City Hall of the City of West Palm Beach shall not be relocated to another site unless the relocation is first approved upon favorable vote of a majority of the electors of the City of West Palm Beach voting thereon in a referendum election.

Section 3. Repeal of Laws and Conflict: All local laws and Ordinances of the City of West Palm Beach in conflict with any provisions of this Ordinance are hereby repealed.

Committee also filed a petition for initiative ordinance on the relocation of the city library with identical provisions.

On May 22, 2006, the city clerk certified to the city commission that sufficient signatures were received for the initiative petitions. On June 19, 2006, City passed a resolution authorizing the filing of an action in circuit court for declaratory relief, stating the city attorney had "conducted such review and has determined that the Initiative Petitions

do not contain ballot questions that may be properly placed on a ballot for consideration by the voters.”

On June 20, 2006, Committee filed a complaint for issuance of alternative writ of mandamus to require City to set an election on the two initiatives. The complaint was based on City’s failure to either pass the ordinances, or submit the ordinances to the electors within the window provided by the charter.

On June 20, 2006, Committee also filed a “motion to issue alternate [sic] writ of mandamus.” The memorandum in support of this motion contended that the ordinances concerned legislative, rather than administrative matters, and, thus, were appropriate matters for an ordinance, that the petitions were not submitted in an untimely manner, and that the petitions would not impair City’s contractual obligations. Committee prayed the court to grant relief in the form of placing the ordinances on the September 5, 2006 ballot. The court initially issued the alternative writ of mandamus. City then filed a motion to quash, an answer with affirmative defenses, and a counterclaim for declaratory relief.

The trial court subsequently entered an amended order quashing alternative writ of mandamus and denying Committee’s motion for summary judgment. The court determined that laches barred mandamus relief, recognizing that mandamus is not appropriate if its issuance “would result in disorder, confusion and disturbance.” and that public interests are a factor in determining whether the writ should issue. The court also found that City would be “severely prejudiced” by the delay that would be caused by granting the requested relief.

Mandamus is awarded “to enforce the performance of a ministerial duty imposed by law where such duty has not been performed as the law requires.” *State ex rel. Clendinen v. Dekle*, 173 So. 2d 452, 456 (Fla. 1965) (emphasis omitted) (citations omitted). It is a discretionary writ, “awarded, not as a matter of right, but in the exercise of a sound judicial discretion<sup>1</sup> and upon equitable principles. ‘It is an extraordinary remedy,

---

<sup>1</sup>City contends that our standard of review should be *de novo*. See, e.g., *Gallagher v. Dupont*, 918 So. 2d 342, 346 (Fla. 5th DCA 2005) (summary judgment on a mandamus action). Though the court did necessarily deny Committee’s motion for summary judgment, the order on appeal properly relates to the court quashing the alternative writ. Because mandamus is a discretionary remedy, and the determination of laches is within the discretion of the trial court, we review the order on appeal for an abuse of discretion.

which will not be allowed in cases of doubtful right, and it is generally regarded as not embraced within statutes of limitations applicable to ordinary actions, but as subject to the equitable doctrine of laches.” *State ex rel. Haft v. Adams*, 238 So. 2d 843, 844 (Fla. 1970) (citations omitted). The ruling of the trial court in mandamus proceedings will not be disturbed absent clear error. *La Gorce Country Club v. Cerami*, 74 So. 2d 95, 99 (Fla. 1954) (citation omitted). Mandamus has been deemed an “extremely limited” basis for jurisdiction and has traditionally been “employed sparingly.” *Brown v. Firestone*, 382 So. 2d 654, 671 (Fla. 1980) (citations omitted). Further, notwithstanding “a clear legal right,” a mandamus writ will not be issued when to do so “would result in disorder, confusion and disturbance. . . .” *Adams*, 238 So. 2d at 844.

Laches is defined as an “[u]nreasonable delay in pursuing a right or claim – almost always an equitable one – in a way that prejudices the party against whom relief is sought.” *Black’s Law Dictionary* 891 (8th ed. 2004). Generally, whether a lawful claim is barred by laches is a matter of trial court discretion. *Metro. Dade County Plumbing Contractors’ Examining Bd. v. State ex rel. Bishop*, 216 So. 2d 76, 77 (Fla. 3d DCA 1968).

In *Adams*, a candidate sought to compel a declaration that he was the only duly qualified candidate for an office. The candidate brought the action less than a month before the scheduled primary election, and the court noted it “would be necessary to print ballots, mail out absentee ballots, and make other arrangements for the orderly holding of such primary election.” Thus, the court found that interfering with the imminent election process after the candidate’s twenty-one day delay in invoking jurisdiction of the court “would result in confusion and injuriously affect the rights of third persons.”

In *Ladas v. Titus*, 53 So. 2d 323 (Fla. 1951), the court denied mandamus relief to a police officer on the basis of laches, where his action was brought nine months and fifteen days after a motion for rehearing was filed, and over seventeen months from his dismissal. The court noted that it could not allow claims against the city to be presented in an untimely manner because “[i]t would be most disastrous to permit the city’s business to drag along in such a slipshod, hit or miss kind of a way. Those who have claims against the City are expected to present them promptly.”

In *Board of Public Instruction of Hendry County v. State ex rel. Hilliard*, 188 So. 2d 337 (Fla. 2d DCA 1966), *aff’d on other grounds*, 191 So. 2d

561 (Fla. 1966), the court held that laches was applicable in a mandamus action where a challenge to the millage rate, after the tax bills calculated at another rate had been mailed out, "would in all probability not only create great confusion and disorder in the operation of the . . . schools, but would also create a chaotic condition in the Tax Assessor and Tax Collector's offices as well as wreak havoc in the entire operation of Hendry County." *But see Clendinen*, 173 So. 2d at 456 (holding that a sixty-day delay in bringing an action to establish that a constitutional amendment was adopted, and not rejected, did not cause a "prejudicial change" in any parties' position; therefore, defense of laches was inapplicable); *City of Daytona Beach v. Layne*, 91 So. 2d 814 (Fla. 1957) (finding that a police officer's seven-month delay in bringing a mandamus action did not prejudice or materially affect the city, so that laches was inapplicable).

Committee contends that laches does not apply under the circumstances presented here, citing to *Wilson v. Dade County*, 369 So. 2d 1002 (Fla. 3d DCA 1979). In that case, the Third District reversed where the trial court found an ordinance proposed by initiative petition to be invalid and entered a temporary injunction against the county forbidding the ordinance to be placed on the ballot. *Id.* at 1003. Committee also relies on *Scott v. City of Orlando*, 173 So. 2d 501 (Fla. 2d DCA 1965), wherein the court found the legislative act of locating a municipal theater proper for referendum, notwithstanding that City had already spent funds in anticipation of building the facility. *Wilson* and *Scott*, however, are distinguishable, as neither involved a mandamus action with the defense of laches.

Committee also cites, in support of its contention that laches should not be a bar, *Teachers Management & Investment Corp. v. City of Santa Cruz*, 64 Cal. App. 3d 438 (1976). We find this case unpersuasive, in that it did not deal with mandamus relief. Further, the specific laches defense here goes to almost three years of unreasonable delay and does not involve an attempt to have an ordinance declared void. *Duran v. Cassidy*, 28 Cal. App. 3d 574 (1972), where the California court found laches inapplicable when the petitioners acted with diligence in presenting their initiative, is also unpersuasive. There, the city approved a development plan in November 1971, and the voters appeared at a November 15, 1971 counsel meeting to voice their objections. Here, in contrast, almost three years have passed, the project is well underway, and millions of dollars have been spent and committed.

Committee further contends that laches is inapplicable in this case

because the proposed ordinances are not directed to the current relocation of city hall and the library, but rather, are ordinances of general applicability. Consequently, Committee urges that any issue of whether the proposed ordinance would apply to the current city hall and library relocation would not be ripe for consideration until the electorate had passed the ordinance. This contention is predicated on the proposition that whether an ordinance may be applied in a certain circumstance does not bar the ordinance from being placed on the ballot. See, e.g., *West Palm Beach Ass'n of Firefighters, Local Union 727 v. Bd. of City Comm'rs of the City of West Palm Beach*, 448 So. 2d 1212 (Fla. 4th DCA 1984); *Citizens for Responsible Growth v. City of St. Pete Beach*, 940 So. 2d 1144 (Fla. 2d DCA 2006). These cases, however, each involve discrete legal issues and are distinguishable from this case in that none involved a defense of laches.

In any event, we reject Committee's argument that these proposed ordinances are simply of general applicability. Although the proposed ordinances are silent as to whether they apply to the current move of the city hall and library, the record is clear that they are, in substantial part, directed to the current relocation. First, section three of each ordinance provides that "All local laws and Ordinances of the City of West Palm Beach in conflict with any provisions of this Ordinance are hereby repealed." Consequently, the proposed ordinances are intended to repeal the plethora of resolutions already passed in relation to the current relocation. Second, in Committee's own motion for issuance of alternative writ of mandamus, it states that the procedure set forth in the ordinances, wherein the electorate must vote on a proposed relocation, "applies not only to the current contemplated relocation of the buildings, but to all future relocations of the buildings as well." Moreover, at a hearing on its motion, Committee argued that the allocation of \$11 million for the current relocation would be "completely wasted if our ordinance passes and the citizens vote not to [approve the City Center site]."

Indeed, the record supports that at the time Committee was gathering signatures, there was much public discussion relating to the current relocation. In her deposition, committee member Wright said:

One of the most surprising things in gathering signatures in the referendum process was how little we had to explain to people. Because at that time there was saturation of media coverage by the two major newspapers servicing this area, the Sun Sentinel and The Post, both in editorials and



in news coverage . . . . People had a high, high, high knowledge of this because of the saturation of news coverage.

They were all very well aware of the debate. They were well aware of the library debate. They were well aware of the City Center debate. We did not have to spend as much time explaining things because they already knew it and they already knew about the petition campaign.

Thus, we glean the intent of the signatories to petitions was for the proposed ordinances to affect the current relocation. This is a proper consideration in these circumstances. *See generally Advisory Opinion to the Governor – 1996 Amendment 5 (Everglades)*, 706 So. 2d 278 (Fla. 1997) (citation omitted) (“The touchstone for determining the meaning of a constitutional amendment adopted by initiative is the intent of the voters who adopted it . . . .”); *Dep’t of Envtl. Prot. v. Millender*, 666 So. 2d 882 (Fla. 1996) (citation omitted) (“[W]e may look to the explanatory materials available to the people as a predicate for their decision as persuasive of their intent.”); *Jenkins v. State*, 385 So. 2d 1356 (Fla. 1980) (citation omitted) (“The significance of the public discussion concerning the amendment is that it provides a frame of reference by which to ascertain the intent of the voters in adopting the amendment.”).

As we recognize the broad discretion a trial court has in issuing a writ of mandamus and in finding laches applicable, we conclude that the trial court could properly decide that mandamus in this case was barred by the application of laches, where there was evidence that Committee had not acted for approximately three years while City continued to pass resolutions regarding the current relocation of city hall and the library and development of City Center. Accordingly, it was within the trial court’s discretion to reject Committee’s argument that laches was inapplicable because its mandamus action was filed a day after City refused to place the ordinances on the ballot. Although the parties argue as to the extent of planning, expenditures, and completeness of the project as it relates to the prejudice element, there certainly has been enough work done on the project to support a conclusion of prejudice.

We also find section 6.02 instructive in determining what constitutes an unreasonable delay. In that section, a petition seeking to repeal an ordinance or submit that ordinance to a vote of the electors must be filed within thirty days of enactment of that ordinance. While here City

passed resolutions.<sup>2</sup> the time limitation in the charter evinces a requirement that objections be lodged to the actions of City within a brief period of time. Though we are mindful of the difference between an ordinance and a resolution<sup>3</sup>, we find section 6.02 to be of such like character as to guide us in considering the equity of laches as it applies to unreasonable delay in objecting to a resolution. See generally *Radiation, Inc. v. Campbell*, 200 So. 2d 192 (Fla. 4th DCA 1967) (citing *Grable v. Nunez*, 64 So. 2d 154 (Fla. 1953)). ("[R]ecognizing that in courts of equity there is no such thing as a statute of limitations but rather that the court is governed by the doctrine of laches. [but noting] the Florida Supreme Court nevertheless held an equity action could be barred by applying the statute of limitations"); *Reed v. Fain*, 145 So. 2d 858 (Fla. 1961) ("A statute of limitation may, of course, be employed as a guide in an equity action in connection with a careful consideration of all of the existing equities").

Here, the delay could properly be considered unreasonable when gauged in light of the thirty-day limitation period that would have been imposed had City acted by ordinance rather than resolution. Committee acknowledges the thirty-day limit would have applied to these petitions had it been contesting an ordinance. If the right to contest an ordinance is cut off after thirty days, it follows that, at some point, the right to contest these resolutions should similarly be cut off.

---

<sup>2</sup> Whether City should have passed ordinances rather than resolutions to effectuate the plans is not a determinative issue in this case and, consequently, is not being addressed

<sup>3</sup>Section 166.041 provides, in relevant part,

(1) As used in this section, the following words and terms shall have the following meanings unless some other meaning is plainly indicated:

(a) "Ordinance" means an official legislative action of a governing body, which action is a regulation of a general and permanent nature and enforceable as a local law.

(b) "Resolution" means an expression of a governing body concerning matters of administration, an expression of a temporary character, or a provision for the disposition of a particular item of the administrative business of the governing body.

§ 166.041, 1)(a)(b), Fla. Stat. (2005).

As noted by the trial court, the delay in this case was thirty times longer than the time period provided in the charter. There comes a point when an unreasonable delay in bringing an action challenging the site selection cuts off the right to vote on that selection. See *Paget v. Logan*, 474 P.2d 247 (Wash. 1970) (en banc) (citation omitted) (holding "at some point in time, a proposed stadium project may progress to a point where only administrative decisions will remain to complete the project. Initiative measures concerning site selection at that time could well be inappropriate"); *Kirsch v. City of Abilene*, 244 P. 1054 (Kan. 1926) (finding laches where "[t]he plaintiffs . . . stood by from April until September, while the city, under the instruction of the voters, was disposing of bonds, wrecking a building, incurring large obligations, expending considerable sums of public money, and entering into contracts involving great amounts of money and levying a tax for payment of bonds, before they asserted their claims . . . . There has been such a change of conditions during the inexcusable delay of plaintiffs that the granting of the relief asked would be extremely prejudicial to the defendants, and work great hardship and loss to the city and those with whom they had dealt.")

Finally, the trial court could properly consider that issuing the writ in this case would have caused confusion as to whether the relocation in process will proceed or whether it must be stopped. Committee acknowledges that this would not be clearly determined until a later date. Disorder and disturbance to City would result from having to stop the current relocation, wait for the vote on the ordinances, and, if the ordinances passed, determine whether the new ordinances are even applicable to the move in progress, and, if so, wait until the voters either accepted or rejected the current site. If the site was so rejected, City would have to begin the process of selecting a site anew. As our supreme court stated in *Ladas*, "[i]t would be most disastrous to permit the city's business to drag along in such a slipshod, hit or miss kind of a way." The same considerations are present here.

Additionally, although we recognize that the proposed ordinances necessarily contemplate voting on future relocations beyond the one in progress, mandamus cannot issue to prevent a future harm. Further, our affirmance of the instant order in no way precludes Committee from seeking to place an initiative ordinance on the ballot pertaining to any future relocation of city hall and the library.

As we affirm on the basis of laches, we do not reach the issue of whether the proposed ordinances are impermissibly vague in failing to

provide a time frame for voting and failing to provide what constitutes "relocation."

As to all other issues raised, we also find no reversible error or abuse of trial court discretion. Therefore, the order on appeal is affirmed.

SHAHOOD and TAYLOR, JJ., concur.

\* \* \*

Consolidated appeals from the Circuit Court for the Fifteenth Judicial Circuit, Palm Beach County: Amy L. Smith. Judge: L.T. Case No. 502006CA006094XXXXME.

Thomas R. Julin and Patricia Acosta of Hunton & Williams LLP, Miami, and John M. Jorgensen and S. Brian Bull of Scott, Harris, Bryan, Barra & Jorgensen, P.A., Palm Beach Gardens, for appellants.

Jane Kreusler-Walsh and Rebecca Mercier-Vargas of Jane Kreusler-Walsh, P.A., Brian B. Joslyn and Richard A. Jarolem of Boose, Casey, Ciklin, Lubitz, Martens, McBane & O'Connell, and Claudia M. McKenna, City Attorney, West Palm Beach, for appellees.

***Not final until disposition of timely filed motion for rehearing.***

IN THE CIRCUIT COURT OF THE  
FIFTEENTH JUDICIAL CIRCUIT, IN  
AND FOR PALM BEACH COUNTY,  
FLORIDA

Case No. 502006-CA-006094XXXXMBAD

Judge: David French

CAROLYN J. WRIGHT, MICHAEL )  
BORNSTEIN, ANITA MITCHELL, GLADYS D. )  
VAN OTTEREN, and PATRICIA M. HIGH, )  
 )  
Petitioners, )  
vs. )  
 )  
LOIS FRANKEL, as mayor of City of West Palm )  
Beach, a municipality of the State of Florida, )  
ISAAC ROBINSON, JR., GERALDINE MUOIO, )  
JAMES EXLINE, KIMBERLY MITCHELL, and )  
WILLIAM MOSS, as city commissioners of City )  
of West Palm Beach, a municipality of the State of )  
Florida, and CITY OF WEST PALM BEACH, a )  
municipality of the State of Florida, )  
 )  
Respondents. )  
 )

FILED  
08 JUL 24 PM 10:15  
CLERK OF COURT  
Palm Beach County, Florida

Stipulation for Entry of Final Judgment

Petitioners, Carolyn J. Wright, Michael Bornstein, Anita Mitchell, Gladys D. Van Otteren, and Patricia M. High (collectively "the Committee"), and respondents, the City Commissioners and the City of West Palm Beach (collectively "the City"), stipulate as follows:

1. On October 3, 2007, the Fourth District Court of Appeal issued its opinion On Motion for Rehearing En Banc (the Opinion), withdrawing and substituting its previously issued opinion. The Opinion reversed the trial court's decision to quash the alternative writ of mandamus and the denial of the Committee's motion for summary judgment.
2. On December 31, 2007, the Fourth District Court of Appeal denied the City's

motion for rehearing en banc, but certified the question to the Florida Supreme Court as a question of great public importance.

3. On June 2, 2008, the Florida Supreme Court entered an order denying the Petition for Review.

4. On June 13, 2008, the Fourth District Court of Appeal issued its mandate to this Court.

5. The Committee incurred reasonable costs, attorneys' fees, and interest of \$300,000 in achieving a successful outcome. The City is agreeable to reimbursing the Committee on or before October 15, 2008, by delivering a check payable to Hunton & Williams LLP Trust Account in the amount of \$300,000.

6. The parties and their attorneys conferred on June 12, 2008, to discuss the requirements of the mandate and whether a compromise could be reached to resolve all remaining issues in this litigation.

7. The Committee's primary objective in initiating this litigation was to require the City to submit to the electorate two ordinances that would prohibit relocation of the City Library and the City Hall without the consent of the electorate. The City's primary objective was to prevent such ordinances from being applied to prevent relocation of the City Library and City Hall from their present locations to City Center.

8. During the pendency of this litigation, the City proceeded with construction of City Center and that facility is now expected to be completed in spring 2009.

9. The parties recognize that adoption of the ordinances proposed and application of those ordinances to block the currently planned relocation would create significant practical and financial problems that would not have been faced if the ordinances had been adopted and

applied at the time that ordinances were first proposed by the Committee in 2006.


10. In light of the changed circumstances and in the best interest of the citizens and the City of West Palm Beach, the parties have agreed that this the Court should enter a final judgment in the form attached. In the event that the City makes the payment set forth in paragraph 6 above, the Committee shall provide the City with a satisfaction of the judgment.

11. Carolyn Wright has express authority to enter into this agreement on behalf of the Committee. Mayor Lois Frankel has express authority to enter this agreement on behalf of the City.


12. This agreement constitutes the entire agreement between the parties relating to the subject matter hereof and supersedes all prior or contemporaneous agreements or understandings relating to such subject matter. No modification of this agreement shall be effective unless in a writing executed by each of the parties.

THE COMMITTEE

By

  
Carolyn Wright, Chair


By

  
Michael Bornstein 6/23/08

By

  
Anita Mitchell

By

  
Gladys D. Van Otteren

By

  
Patricia M. High

Dated:

  
June 21, 2008

THE CITY

By

Lois J. Frankel, Mayor

Dated:

- **FINANCE**
- **BUSINESS**
- **LAW**
- **HEALTH & FITNESS**
- **TECHNOLOGY**
- **TRAVEL & ENTERTAINMENT**

## POLITICS

# Conservative front group wants FEC to look into Lois Frankel's finances

- **BY FLORIDA INDEPENDENT**
- SEPTEMBER 11, 2011
- 3 MINUTE READ

A conservative front group is calling on the Federal Elections Commission to look into Emily's List-endorsed Lois Frankel's campaign finances. Frankel is challenging Rep. Allen West, R-FL, in the 2012 election.

A conservative front group is calling on the Federal Election Commission to look into Emily's List-endorsed Lois Frankel's campaign finances. Frankel is challenging Rep. Allen West, R-Fort Lauderdale, in the 2012 election.

According to *The Palm Beach Post*, the group wants to "look into how former West Palm Beach mayor Lois Frankel's Democratic congressional campaign raised \$254,605 in March while reporting only \$706 in start-up expenditures."

The complaint (.pdf) was filed by the [National Legal and Policy Center](#). According to [SourceWatch](#), the center is a "front group and industry-funded conservative political and policy lobbying organization." The group's website says its aim is to "promote ethics in public life through research, investigation, education and legal action." Most of the group's funding comes from Richard Mellon Scaife's foundation. Scaife is a "premier financier for right-wing political and policy organizations in the United States," according to SourceWatch.



The group has accused Frankel's campaign of running an "off-the-books campaign with respect to campaign expenditures." It also says "the FEC should determine why her report covering activity through March 31 didn't list expenditures for her consultant and for items such as a campaign phone, registering as a Florida corporation, registering a domain name, and renting a post office box." The center also states on its website that Frankel "took the rather novel approach of reporting the income but omitting most of the campaign's expenses."

Frankel campaign consultant Brian Smoot explained to the *Post* that the reason the report did not list expenditures for a consultant is that he did not submit a bill for his services during his first two weeks on the job. He told the newspaper that the complaint was a "pathetic attempt" by West supporters "to smear Frankel."

The *Post* also pointed the National Legal and Policy Center is among those supporters. The group's chairman, Ken Boehm, gave \$250 to West's unsuccessful 2008 campaign:

Boehm said the complaint was not politically motivated, but came about after his group routinely reviewed hundreds of first-quarter FEC reports. He said the group is looking into filing complaints against three or four other campaigns, but Frankel's "was just so easy that we did it first."

Much like last year's contentious election that got West into office, many are expecting a similar atmosphere next year. West is getting special help from the National Republican Congressional Committee because of what the organization sees as his vulnerability in the next cycle.

The Democratic, pro-abortion rights group Emily's List has targeted West's seat because of its vulnerability and because West has held an extremely socially conservative position on the topic of abortion and women's rights.

In a speech last April to a conservative Christian women's group, West claimed that liberal women "neutering American men" were to blame for the country's debt:

We need you to come in and lock shields, and strengthen up the men who are going to the fight for you. To let these other women know, on the other side — these Planned Parenthood women, the Code Pink women, and all of these women that have been neutering American men and bringing us to the point of this incredible weakness — to let them know that we are not going to have our men

become subservient. That's what we need you to do. Because if you don't, then the debt will continue to grow.

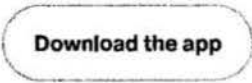
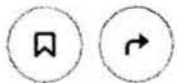
Frankel is the term-limited mayor of West Palm Beach who also served as a Democratic state House member. She had previously told the *Post* that she expected to "raise \$4 million for the race."



HOME > POLITICS

## 20 members of Congress personally invest in top weapons contractors that'll profit from the just-passed \$40 billion Ukraine aid package

Kimberly Leonard May 19, 2022, 1:55 PM



At least 20 federal lawmakers or their spouses hold stock in Raytheon Technologies and Lockheed Martin, which manufacture the weapons Western allies are sending Ukraine to fight Russian invaders, according to an Insider analysis of federal financial records.

The stock holdings by members of Congress come as Congress, on Thursday, approved \$40 billion in defense and other aid to Ukraine. Both companies' stock — especially that of Lockheed Martin — have risen since Russia invaded Ukraine on February 24.

Among the weapons the US and NATO members have dispatched to Ukraine are the so-called "fire and forget" Javelin and Stinger missiles that troops carry on their shoulders during battle.

The joint Raytheon/Lockheed Martin-made Javelin missile is touted as "the world's premier shoulder-fired anti-armor system" capable of destroying battle tanks.

Raytheon's Stinger missiles are designed to shoot down helicopters and other low-flying aircraft. Raytheon advertises the Stinger as "rapidly deployed by ground troops" and credited with "more than 270 fixed- and rotary-wing intercepts."

Among those investing in the defense contractors is Republican Rep. John Rutherford of

Rutherford sits on the House Appropriations Committee that's in charge of federal government spending. In that role he serves on the subcommittee for Homeland Security as well as the Military Construction, Veterans Affairs, and Related Agencies subcommittee.

"What we're seeing in Ukraine is the tragic consequence of an evil & aggressive dictatorship," Rutherford tweeted on February 24. "Putin invaded a sovereign nation for no legitimate reason, & he must be held accountable. The U.S. and our allies must impose the maximum possible sanctions & leave nothing off the table."

Rutherford's office did not return Insider's requests for comment. Rutherford's office previously said the congressman's stocks are managed by a third party.

▷ ×

Another Republican, Rep. Marjorie Taylor Greene of Georgia, bought between \$1,001 and \$15,000 in Lockheed Martin shares on February 22.

Two days after her purchase, Greene wrote in a Twitter thread: "War is big business to our leaders."

In a statement to Insider, Greene said her investment advisor made the purchase and noted it was only one among several other new purchases.

their official responsibilities and position of public trust.



**Ilhan Omar** 

@IlhanMN · **Follow**

US House candidate, MN-05



Add this to the list of why members of Congress should never be allowed to trade stocks.

**congresstrading.com** @congresstrading

Just out: Rep. Marjorie Taylor Greene bought stock in America's LARGEST defense contractor, Lockheed Martin \$LMT, a day before tweeting "War and rumors of war is incredibly profitable..." (report condensed).

1:14 PM · Mar 7, 2022



< **HOME PAGE**

"Add this to the list of why members of Congress should never be allowed to trade stocks," quipped Democratic Rep. Ilhan Omar of Minnesota on Twitter, sharing a subtweet that showed Greene's financial disclosure document.



**Rep. Lois Frankel, Democrat of Florida, holds stock in health insurance company Cigna.** Toya Sarno Jordan/Getty Images

## **Some members long held stock in the companies, others traded recently**

Other federal lawmakers have traded stock in the defense contractors in recent weeks.

Republican Rep. Diane Horsburgh of Tennessee and her husband made three concrete

UNITED STATES HOUSE OF REPRESENTATIVES  
Periodic Transaction Report

NAME: <u>Diana Harshbarger</u>		OFFICE TELEPHONE: <u>202-225-8368</u>			
<input checked="" type="checkbox"/> Member of the U.S. House of Representatives State: <u>TN</u> District: <u>01</u> <small>File an original and 2 copies</small>	<input type="checkbox"/> Officer or Employee Employing Office: _____ <small>File an original and 1 copy</small>				
Did you purchase any shares that were allocated as a part of an Initial Public Offering? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>If you answered "yes" to this question, please contact the Committee on Ethics for further guidance.</small>		Please indicate whether this is an initial report or an amended report. For amendments, please provide the date of the report you are amending. <input checked="" type="checkbox"/> Initial Report <input type="checkbox"/> Amendment Date of Report Being Amended: _____			
FULL ASSET NAME		TYPE OF TRANS-ACTION	DATE OF TRANS-ACTION	DATE NOTIFIED OF TRANS-ACTION	AMOUNT OF TRA

1



## PERIODIC TRANSACTION REPORT

Clerk of the House of Representatives • Legislative Resource Center • 135 Cannon Building • Washington, D.C. 20541

## FILER INFORMATION

Name: Hon. Lois Frankel

Status: Member

State/District: FL21



All trades happened in January — close to when the Wall Street Journal reported that the United States permitted Estonia, Latvia, and Lithuania to dispatch the Javelin and Stinger missiles to Ukraine.

Representatives for Frankel and Harshbarger did not respond to Insider's request for comment. Harshbarger has previously violated the 2012 Stop Trading on Congressional Knowledge Act, or STOCK Act, by reporting trades made by her financial advisor past a federally mandated deadline.

More than a dozen other members of Congress or their families hold similar investments at a time when President Joe Biden approved a \$350 million Ukraine military aid package last week. The US government is also poised to deliver another \$6.5 billion for defense purposes in Ukraine as part of a new spending package heading to the president's desk.

CNN reported that the US and other NATO members have so far sent Ukraine 17,000 anti-tank missiles and 2,000 Stinger anti-aircraft missiles.

Most lawmakers who hold shares in Raytheon and Lockheed Martin did not reply to Insider's request for comment. The list includes:

- **Sen. Deb Fischer**, a Republican of Nebraska, inherited between \$50,001 to \$100,000 in Lockheed Martin stock from her mother after she died on December 26, 2021. Fischer is the top Republican on the Senate Armed Services Subcommittee on Strategic Forces.
- **Sen. John Hickenlooper**, a Democrat of Colorado, held between \$100,001 and \$250,000 in Raytheon shares, according to his most recent annual disclosure.
- **Sen. Sheldon Whitehouse**, a Democrat of Rhode Island, held \$15,001 to \$50,000 in Lockheed Martin stock. He also held between \$50,001 and \$100,000 in stock in United Technologies, which was acquired by Raytheon.

- Thomas Daffron, a former longtime Hill chief of staff and the husband of Republican **Sen. Susan Collins** of Maine, held between \$15,000 and \$50,000 in stock United Technologies, which was acquired by Raytheon. Annie Clark, Collins' spokeswoman, said he first acquired United Technologies at least as far back as 2014, before the Raytheon acquisition. "Tom Daffron has no involvement in the purchase or sale of any of the stocks in his diversified portfolio," she said. "These investment decisions are made solely by a third-party advisor." Clark also added that the senator herself does not own any stocks.
- Abigail Perlman Blunt, a lobbyist for Kraft Heinz who is also the wife of retiring Republican **Sen. Roy Blunt of Missouri**, held between \$100,001 and \$250,000 in Lockheed Martin shares.
- **Sen. Shelley Moore Capito**, a Republican of West Virginia, held between \$1,001 and \$15,000 in Lockheed Martin stock, her annual disclosures indicate. Her husband, Charlie Capito, who previously worked in finance, held between \$1,001 and \$15,000 in United Technologies, now acquired by Raytheon.
- **Sen. Gary Peters**, a Democrat of Michigan, held between \$1,001 and \$15,000 in Raytheon stock. Peters chairs the Democratic Senatorial Campaign Committee as well as the Committee on Homeland Security and Governmental Affairs.
- Martha Stacy, the wife of Democratic **Sen. Tom Carper** of Delaware, held between \$1,001 and \$15,000 in Raytheon stocks and between \$1,001 and \$15,000 in

couple has "always been careful to ensure that their financial investments are handled separately by a financial advisor who makes decisions and transactions independently." She added that Carper "fully supports ongoing conversations in Congress on how to strengthen the legislation and improve transparency and accountability for our elected officials."

- John Axne, the husband of Democratic **Rep. Cindy Axne** of Iowa who operates a digital design firm, sold between \$1,001 and \$15,000 in Lockheed Martin shares twice in February but still appears to hold stock in the company. Axne previously violated the STOCK Act through failing to properly report trades.
- **Rep. Kevin Hern**, a Republican of Oklahoma who built his wealth through McDonald's franchises, traded both Raytheon and Lockheed Martin stock throughout 2021. He most recently purchased shares of between \$1,001 and \$15,000 in both Raytheon and Lockheed Martin in December, documents show. Representatives for Hern, who has past STOCK Act violations, didn't reply to Insider's most recent inquiry but previously said a financial advisor manages the trades and that Hern "does not have any input or control over stock purchases."
- **Rep. Fred Upton**, a Republican of Michigan who is retiring after his term ends in 2022, held between \$1,001 and \$15,000 in Raytheon shares.
- **Rep. Steve Cohen**, a Democrat of Tennessee, held between \$15,001 to \$50,000 in Raytheon stock.

# Super PAC attacks Lois Frankel over pay raise, jobs record

The YG Action Fund launched an [ad](#) bashing Democratic congressional candidate Lois Frankel's tenure as West Palm Beach mayor.

YG (which stands for Young Guns) is supporting Frankel's Republican opponent Adam Hasner in the Broward/Palm Beach Congressional District 22. Their cartoonish ad shows a smiling headshot of Frankel and makes a series of claims about her tenure as mayor. Here is part of the script:

"Frankel took a 40 percent pay raise with our money. We lost jobs," says the narrator while the text on the screen states "West Palm Beach lost jobs." The ad then continues: "Frankel flew from a posh country club to a party across town in a police helicopter. You sat in traffic. Frankel went on a spending spree resulting in a budget deficit. You? Higher taxes to pay for it. \$13,000 in taxpayer money for a designer marble bathroom in Frankel's office."

You can read [here](#) about a TV station pulling the ad over a dispute about the word "deficit." (A spokesman for the PAC told us that a new version omits the word "deficit" and that some other stations didn't object to the original version.)

For this fact-check, we will examine whether Frankel took a 40 percent pay raise while West Palm Beach lost jobs.

## 2004 pay raise

The ad doesn't explain when Frankel -- who served as mayor from 2003 to 2011 -- took that 40 percent pay raise. A spokesman for the PAC said the pay raise referred to 2004 and sent us quotes from *Palm Beach Post* articles that year.

We will pull information from those articles:

In January 2004, Frankel formed a committee to explore whether she and commissioners should get a pay raise. She said she was forming the committee because the city code required an annual review of all employee salaries. At the time, the city foresaw a budget shortfall of \$110,000 -- the prior year it had a \$2 million shortfall.

The committee recommended increasing the mayor's salary and the city commission obliged. (We were unable to quickly obtain the committee's report or commission meeting minutes ourselves from a city spokesman so we relied on the *Post*'s articles about it.)

On July 6, 2004, the city commission unanimously voted to raise Frankel's salary from \$89,250 to \$125,000 effective Oct. 1. That's an increase of about \$35,750 or 40 percent. The last time the mayor received a raise was 1998, the *Post* wrote.

Frankel didn't vote on the pay raise, her campaign said. The city has a strong mayor form of government in which the mayor votes to break a tie, which wasn't necessary in this case.

The *Post* wrote that Frankel's new salary would place her in the middle range compared with other strong mayors. (Strong mayors tend to earn higher salaries than other mayors because strong mayors are the chief executive.) The city commissioners received a smaller pay boost.

(PolitiFact Florida contacted a couple other large cities with strong mayors and found these annual salaries in 2004: Tampa, \$135,000; St. Petersburg \$110,334.)

An analyst in the city's human resources department told us that Frankel's annual salary remained at \$125,000 from 2004 through 2011.

### **Frankel's response about the pay raise**

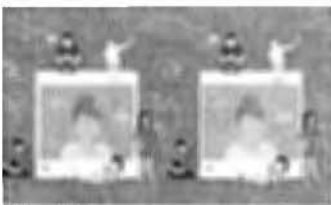
Frankel doesn't dispute that she got that pay raise.

"The city commission voted unanimously to adopt the recommendations of a blue-ribbon committee that called for raising the salaries of West Palm Beach's elected officials to be more competitive," wrote Frankel spokesman Joshua Karp. He cited this sentence from a *Palm Beach Post* article: The blue-ribbon committee "said the mayor's pay hadn't kept pace with the demands of the job in a fast-growing city."

But as for the second half of the claim -- while West Palm Beach "lost jobs" -- Frankel points to some different statistics about employment than those sent to us by the PAC.

Were taxpayers losing their own jobs while paying Frankel a higher paycheck?

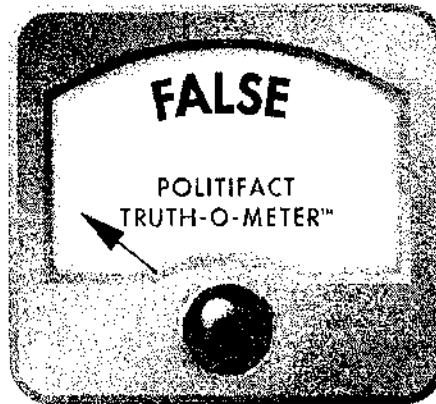
### **FEATURED FACT-CHECK**



#### **Viral image**

stated on September 28, 2022 in an Instagram post

**A news anchor warned that if Hurricane Ian "moves 20 miles to the west ... you and everyone you know are dead."**



By Ciara O'Rourke • September 28, 2022

The ad says that West Palm Beach lost jobs as Frankel's own taxpayer-funded paycheck soared.

A spokesman for the PAC sent us data from the Bureau of Labor Statistics about the unemployment rate starting in March 2003 when Frankel took office and through her tenure in March 2011 and beyond. But that data was for the entire metropolitan area, which extends beyond the city boundaries.

We looked at Local Area Unemployment Statistics [data](#) for just the city of West Palm Beach. That showed the unemployment rate rose from 5.8 percent in March 2003 to 10.2 percent in March 2011. Frankel's tenure overlapped with the national recession -- the rise in unemployment wasn't unique to her city.

But during her tenure, the number of employed workers also rose -- from 42,876 to 44,848. (Her campaign cited some regional figures showing growth in the number of employed people.)

So while it's true that unemployment rose, the number of employed workers also rose.

We interviewed Sean Snaith, an economist at the University of Central Florida about the unemployment statistic emphasized by one side and the employment figures emphasized by the other. Both are important to get a picture of the labor market, he said.

"You can't cherry-pick your favorite statistic and point to that and have it as definitive evidence," he said. "Neither is superior."

The unemployment rate relates to the number of unemployed people relative to the labor force. That means if some unemployed people give up looking for work, the employment rate can improve even though in reality the situation hasn't improved.

Generally speaking, city mayors can't take much of the blame or credit for unemployment or employment.

"There is only so much (mayors) can do when financial markets are in disarray, and the housing market has imploded," Snaith said. "I don't care how adept you are at sweet-talking businesses."

If we thought that Frankel should take the blame for the unemployment spike during part of her

tenure then we'd also have to give her credit for the drop in annual unemployment to below 4 percent between 2005 and 2007.

### **Our ruling**

The YG Action PAC said that "Frankel took a 40 percent pay raise as mayor." Frankel did form a committee to explore whether she should get a pay raise and that resulted in a 40 percent boost -- an extra \$35,750 -- in 2004. However the ad omits the context for that raise -- the mayor's salary hadn't had an increase since 1998 and after she got the raise in 2004, her salary then remained set at \$125,000 a year until she left office in 2011.

The ad also stated that while Frankel got a hefty pay hike, the city "lost jobs." The unemployment rate rose from about 5.8 percent to 10.2 percent during her tenure. But the number of employed actually increased slightly and Frankel can't be blamed for a national recession.

If we look at the big swing that occurred in the economy, "no mayor in the world would be able to counterbalance the forces that were in play," Snaith said.

For those omissions about context, we rate this claim Half True.

### **Our Sources**

Palm Beach Post, "Panel to study whether Frankel, commission should get pay raises," Accessed in Nexis, Jan. 28, 2004

Palm Beach Post, "West Palm gives Mayor \$35,750 pay raise," Accessed in Nexis, July 7, 2004

Palm Beach Post's Post on Politics blog, "[Super PAC ad blasts Frankel's marble bathroom, police helicopter trips](#)," Sept. 24, 2012

Palm Beach Post's Post on Politics blog, "[WPTV pulls anti-Frankel ad](#)," Sept. 24, 2012

The Hill's Ballot Box blog, "[Super-PAC spends \\$5.5 million in support of GOP Young Guns](#)," Aug. 10, 2012

Bureau of Labor Statistics, "[Local area unemployment and employment statistics for West Palm Beach](#)," accessed Sept. 27, 2012

Interview, Joshua Karp, spokesman for Lois Frankel Congressional campaign, Sept. 27, 2012

Interview, Brad Dayspring, senior advisor for Young Guns Action Fund, Sept. 25, 2012

Interview, Elliot Cohen, West Palm Beach spokesman, Sept. 27, 2012

Interview, Nancy Neely, West Palm Beach human resources analyst, Sept. 27, 2012



Interview, Monica Beyrouti, Research Analyst for the Florida League of Cities, Sept. 27, 2012

Interview, Sean Snaith, director of the University of Central Florida's Institute for Economic Competitiveness within the College of Business Administration, Sept. 27, 2012

Interview, Kimberly Crum, Tampa's Director of Human Resources, Sept. 27, 2012

Interview, Beth Herendeen, city of St. Petersburg spokeswoman, Sept. 27, 2012

US MARKETS OPEN

In the news

▲ Dow Jones	▼ Nasdaq	▼ S&P 500	▲ TSLA	▲ FB	▲ BABA
-0.34%	+0.05%	0%	-2.06%	-0.23%	-7.21%



INSIDER




## Republican Rep. Diana Harshbarger failed to properly disclose more than 700 stock trades worth as much as \$10.9 million in violation of federal transparency law

Dave Levinthal 2 minutes ago



< HOMEPAGE



Rep. Diana Harshbarger, a Republican from Tennessee, is seen during a group photo with freshmen members of the House Republican Conference on the House steps of the Capitol on Monday, January 4, 2021. Tom Williams/CQ-Roli Call, Inc via Getty Images

**Harshbarger disclosed hundreds of stock trades weeks or months after a federal deadline.**

**The tardy trades could invite an ethics investigation and fine.**

**A Harshbarger aide said the congresswoman "accepts full responsibility."**

**[See more stories on Insider's business page.](#)**

## 10 Things in Politics: The latest in politics & the economy

Email address

Sign up

By clicking 'Sign up', you agree to receive marketing emails from Insider as well as other partner offers and accept our [Terms of Service](#) and [Privacy Policy](#).

[< HOMEPAGE](#)

Rep. Diana Harshbarger, a Republican from Tennessee, failed to properly disclose more than 700 stock trades worth at least \$728,000 — and as much as \$10.9 million, according to an Insider analysis of newly filed congressional records.

Harshbarger's late disclosures involved stock trades by herself and her husband, Robert Harshbarger, between early January and June 2021. Those trades involved the stock of dozens of companies, some of which vie for federal government contracts or spend six- or seven figures each year to lobby for favorable laws and regulations.

The companies include Facebook, Walmart, Apple, Verizon Communications, Coca-Cola, oil giant Chevron, and defense contractors Raytheon Technologies Corp., and Lockheed Martin Corp., federal records indicate.

Harshbarger, a first-term lawmaker and member of the House Committee on Education and Labor, also traded potentially tens of thousands of dollars worth of shares in Chegg Inc., an education technology company.

The Harshbargers also bought or sold stock in Johnson & Johnson, a leading COVID-19 vaccine maker, and Regeneron Pharmaceuticals, which manufactures a leading COVID-19 treatment involving monoclonal antibodies.

## Diana Harshbarger disclosure Contributed by Insider Staff (Insider Inc.)



UNITED STATES HOUSE OF REPRESENTATIVES Periodic Transaction Report		HAND DELIVERED
NAME: Diana Harshbarger	OFFICE TELEPHONE: 202-225-6356	LEGISLATIVE RESOURCE CENTER 2021 AUG 16 AM 10:54
<input checked="" type="checkbox"/> Member of the U.S. House of Representatives State <u>TN</u> District <u>01</u> <small>File an original and 2 copies</small>	<input type="checkbox"/> Officer or Employee Employing Office: _____ <small>File an original and 1 copy</small>	OFFICE OF THE CLERK U.S. HOUSE OF REPRESENTATIVES
Did you purchase any shares that were allocated as a part of an Initial Public Offering? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <small>If you answered "yes" to this question, please contact the Committee on Rules, House of Representatives</small>	Please indicate whether this is an initial report or an amendment report. For amendment, please provide the date of the report you are amending. <input checked="" type="checkbox"/> Initial Report <input type="checkbox"/> Amendment	(For Official Use Only)  A \$200 penalty shall be assessed against anyone who files more than 30 days late.

< [HOMEPAGE](#)

SP DC	Provide full name, not just a symbol	1	2	3	4	5	6	7	8	9	10	11	12
----------	--------------------------------------	---	---	---	---	---	---	---	---	---	----	----	----

ST		S	U	P	H			\$1,001-\$15,000	\$15,001-\$50,000	\$50,001-\$100,000	\$100,001-\$250,000	\$250,001-\$500,000	\$500,001-\$1,000,000	\$1,000,001-\$2,500,000	\$2,500,001-\$5,000,000	\$5,000,001-\$10,000,000	Over \$10,000,000	Total Trades Disclosed	Total Trades Not Disclosed
ST	Example Mega Corp. Common Stock		X			10/05/20	03/07/21	X											
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

Document



1

of 48



+

-

86%



In 2013, Robert Harshbarger was sentenced to 48 months in federal prison and slapped with a restitution bill of \$848,504 and a \$25,000 criminal fine for distributing knock-off, Chinese-made drugs not approved by the US Food and Drug Administration to kidney dialysis patients in Kansas.

By federal law, members of Congress have 30 days from when they become aware of a stock trade — and 45 days overall from the date of a trade — to formally disclose it in a certified report to the clerk of the House of Representatives.

Lawmakers are only required to report the values of their stock trades in broad ranges, and all of Harshbarger's individual trades fell within the \$1,001 to \$15,000 range.

< [HOMEPAGE](#)

Harshbarger's tardy reporting could prompt an ethics investigation or fine, which starts at \$200.

In a statement to Insider, Harshbarger's chief of staff, Zac Rutherford, said that the congresswoman in December retained legal counsel to ensure compliance with all House Committee on Ethics guidelines and reporting requirements.

That counsel "established a system and protocols with the congresswoman's personal financial planner who provided assurance of familiarity and experience with all processes and requirements." The financial planner managed the congresswoman's portfolio "without any authorization, direction, or approval from Congresswoman Harshbarger."

However, "the financial advisor did not follow the established system and protocols," Rutherford said. "When the financial advisors' gross oversight was discovered, it became immediately clear that he was not familiar, and his error caused the congresswoman not to meet reporting requirements within the specified timeframe."

Rutherford added that "Harshbarger and our counsel immediately worked to rectify by self-reporting to the Committee and worked with it to file all necessary paperwork. Congresswoman Harshbarger, despite her best efforts to remain compliant, accepts full responsibility and has taken the appropriate steps to ensure this never happens again."

The STOCK Act holds members of Congress personally responsible for complying with disclosure rules, regardless of whether they make stock trades themselves or use a financial adviser or broker.

< [HOMEPAGE](#)

watchdog group Campaign Legal Center, said the Office of Congressional Ethics

"should investigate" whether the lawmaker intentionally hid the trades for months.

"This is yet another example of a lawmaker ignoring the STOCK Act by failing to report a large volume of stock trades without consequence," Payne said.

## **Numerous STOCK Act violations in 2021**

Insider and other news organizations have this year revealed numerous examples of federal lawmakers violating the STOCK Act. The 2012 law was designed to combat insider trading among elected officials and require lawmakers to be transparent about their personal financial dealings.

In addition to Harshbarger, lawmakers who this year appear to have violated the STOCK Act's transparency provisions include:

- Sen. Dianne Feinstein, a Democrat of California
- Sen. Tommy Tuberville, a Republican of Alabama

< [HOMEPAGE](#)

- Rep. Tom Malinowski, a Democrat of New Jersey

Rep. Harley Rouda, a Democrat of California, also

- Rep. Pat Fallon, a Republican of Texas
- Rep. Dan Crenshaw, a Republican of Texas
- Rep. Sean Patrick Maloney, a Democrat of New York
- Rep. Blake Moore, a Republican of Utah
- Rep. Debbie Wasserman Schultz, a Democrat of Florida
- Rep. Kathy Castor, a Democrat of Florida
- Rep. Lori Trahan, a Democrat of Massachusetts
- Rep. Steve Chabot, a Republican of Ohio
- Rep. Cheri Bustos, a Democrat of Illinois
- Rep. August Pfluger, a Republican of Texas

Former Rep. Harley Rouda, a Democrat of California who's attempting a comeback, also failed to properly disclose stock trades.

Rep. Lois Frankel, a Democrat of Florida, likewise appears to have violated the STOCK Act with disclosures a few days late, although her office has disputed that.

---

< [HOMEPAGE](#)







ADVANCING  
DEMOCRACY  
THROUGH LAW

August 19, 2021

Chairman Mike Barnes  
Co-Chairman Paul Vinovich  
Office of Congressional Ethics  
425 3rd Street, SW Suite 1110  
Washington, DC 20024

*Sent via email (oce@mail.house.gov)*

Dear Chairman Barnes and Co-Chairman Vinovich:

Campaign Legal Center ("CLC") respectfully requests that the Office of Congressional Ethics ("OCE") investigate Rep. Diane Harshbarger for a possible violation of the STOCK Act and House rules. From January to June of 2021, Rep. Harshbarger made more than 700 stock and other securities trades<sup>1</sup> with a total value ranging from approximately \$728,000 to \$10.9 million.<sup>2</sup> Rep. Harshbarger did not timely file periodic transaction reports ("PTRs"), which are required for each transaction pursuant to the STOCK Act and House rules. An OCE investigation is necessary to determine whether her failure to file was knowing and willful.

The STOCK Act does not excuse late filings, yet members of Congress are avoiding investigations into the nature of their stock trades by not disclosing the trades, claiming that they were unaware of the transactions, and paying \$200 for a late filing fee. The harm is that this trend could quickly defeat one of the purposes of the STOCK Act, which is real-time

---

<sup>1</sup> The Honorable Diane Harshbarger, Periodic Transaction Report, Clerk of the United States House of Representatives (filed Aug. 16, 2021), [https://disclosures-clerk.house.gov/public\\_disc/ptr-pdfs/2021/8218296.pdf](https://disclosures-clerk.house.gov/public_disc/ptr-pdfs/2021/8218296.pdf) (attached as Exhibit A); Dave Levinthal, *Republican Rep. Diana Harshbarger failed to properly disclose more than 700 stock trades worth as much as \$10.9 million in violation of federal transparency law*, INSIDER (Aug. 19, 2021), <https://www.businessinsider.com/diana-harshbarger-congress-stocks-violation-stock-act-trades-tennessee-2021-8> (attached as Exhibit B).

<sup>2</sup> Rep. Harshbarger's periodic transaction report, *supra* note 1; Levinthal, *supra* note 1.

disclosure of potential conflicts of interest. If members are not held accountable for late filings of PTRs, many may simply wait until their annual financial disclosures to reveal stock trades and pay nominal late fees, thereby circumventing the STOCK Act.

When members of Congress trade individual stocks and fail to disclose those trades, they break the law and diminish the public's trust in government. The recent prevalence of STOCK Act violations in the House shows that merely the threat of a fine is not deterring members of Congress from breaking the law; real accountability is necessary. As members of Congress craft laws that directly impact the lives of all Americans, the public must be able to trust that representatives are acting in the public's interest, and not in their own financial interest.

### **The STOCK Act and House Rules Require Members of Congress to Timely Report All Individual Stock Transactions**

The STOCK Act amended the Ethics in Government Act of 1978 ("EIGA") to require members of Congress to report their individual stock transactions no "later than 30 days after receiving notification of any transaction required to be reported under section 102(a)(5)(B), but in no case later than 45 days after such transaction . . . ."<sup>3</sup>

House rules incorporate these reporting requirements. House Rule 26, clause 2 states, "[f]or the purposes of this rule, the provisions of title I of the Ethics in Government Act of 1978 shall be considered Rules of the House as they pertain to Members, Delegates, the Resident Commissioner, officers, and employees of the House."<sup>4</sup>

The House Committee on Ethics trains and reminds members of Congress annually in writing of the consequences of failing to file PTRs. Specifically, the Committee on Ethics advises:

"[e]ach Member, officer, and senior staffer is responsible for the completeness and accuracy of the information contained in the individual's PTR, even if someone else prepared, or assisted in preparing, all or part of it. The EIGA provides that the Attorney General may pursue either civil or criminal penalties against an individual who knowingly and willfully falsifies a statement or fails to file a statement required by the EIGA. The maximum

---

<sup>3</sup> P.L. 112-105, Section 6; 5 U.S.C. App. 4 § 103(l).

<sup>4</sup> RULES OF THE HOUSE OF REPRESENTATIVES OF THE U.S. 116TH CONG. (2019), Rule 26, cl. 2.

civil penalty is \$61,585. The maximum criminal penalty is up to one year in prison and a fine of up to \$61,585.”<sup>5</sup>

In addition, the Committee on Ethics advises that 18 U.S.C. § 1001 is applicable to PTRs. “That criminal statute provides for a fine of up to \$250,000 and/or imprisonment for up to five years for knowingly and willfully making any materially false, fictitious, or fraudulent statement or representation, or falsifying, concealing, or covering up a material fact, in a filing under the EIGA.”<sup>6</sup>

### **Rep. Harshbarger May Have Knowingly Violated the STOCK Act by Failing to File Timely Periodic Transaction Reports for More than 700 Stock Trades**

For nearly six months, Rep. Harshbarger and her spouse traded securities frequently, but did not file timely PTRs as required. In the first six months of 2021, Rep. Harshbarger made more than 700 trades with a total value ranging from \$728,000 to \$10.9 million.<sup>7</sup> She disclosed these transactions in a PTR in August of 2021. Some trades were not reported until over seven months had passed after the transaction occurred.<sup>8</sup>

Rep. Harshbarger’s trade activity occurred over several months and with significant frequency and volume. With regard to her failure to timely report this trading activity, a spokesperson for Rep. Harshbarger stated that counsel “established a system and protocols with the congresswoman’s personal financial planner who provided assurance of familiarity and experience with all processes and requirements.”<sup>9</sup> Her “financial advisor did not follow the established system and protocols. When the financial advisors’ gross oversight was discovered, it became immediately clear that he was not familiar, and his error caused the congresswoman not to meet reporting requirements within the specified timeframe.”<sup>10</sup>

---

<sup>5</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS 116TH CONG., Memorandum from Committee on Ethics for All Members, Officers, and Employees Regarding Reminder of STOCK Act Requirements, Prohibition Against Insider Trading & New Certification Requirement at 3 (June 11, 2020), [https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg\\_uploaded/STOCK%20Act%206.11.2020%20Final.pdf](https://ethics.house.gov/sites/ethics.house.gov/files/wysiwyg_uploaded/STOCK%20Act%206.11.2020%20Final.pdf).

<sup>6</sup> *Id.*

<sup>7</sup> Rep. Harshbarger’s periodic transaction report, *supra* note 1.

<sup>8</sup> Her Aug. 16, 2021 PTR includes trades from July 2021 that are timely disclosed within the STOCK Act’s required time frame. This complaint is not alleging any wrongdoing as to the timeliness of the reporting for those transactions that occurred in July 2021.

<sup>9</sup> Levinthal, *supra* note 1.

<sup>10</sup> *Id.*

Rep. Harshbarger's explanation raises more questions than it answers. She appears to concede that she had a protocol in place to comply with the STOCK Act because: 1) she was familiar with the legal requirements; and 2) the complexity of the frequent trades by her financial advisor required such a protocol. As a result, it is unclear why it would take nearly eight months for Rep. Harshbarger to realize that she had not signed and submitted any PTRs pursuant to the protocol implemented for the frequent stock trades.

Indeed, there are additional clear facts establishing that Rep. Harshbarger was aware of the need to file PTRs. *First*, according to her PTR, Rep. Harshbarger was promptly notified of the trades after they occurred, so ignorance of the transactions or "financial advisors' gross oversight" are not plausible excuses for failing to timely file PTRs.<sup>11</sup>

*Second*, Rep. Harshbarger was required to attend mandatory ethics training for new members of Congress in 2021.<sup>12</sup> This training includes discussion of financial disclosures and the STOCK Act. Members of Congress are required to complete the ethics training within 60 days of their start date,<sup>13</sup> meaning Rep. Harshbarger would have been required to complete the training no later than March 4, 2021.<sup>14</sup> The Committee on Ethics does not grant extensions for completing ethics training.<sup>15</sup> It therefore seems unlikely that Rep. Harshbarger would not have been aware of the requirements to know of and disclose the trades.

For the foregoing reasons, there is no evidence supporting an assumption that she was not familiar with the requirement and had not received any training.

An investigation is needed to determine if facts suggest that Rep. Harshbarger could have failed to disclose the trades to avoid public scrutiny of the nature of her trades. The trades Rep. Harshbarger failed to report include the purchase and sale of several telecommunications and technology companies, including T-Mobile, Apple, Motorola Solutions, Citrix and Alphabet.<sup>16</sup> These trades occurred while she was a member of the House Subcommittee on Cybersecurity, Infrastructure Protection & Innovation within the Committee on Homeland Security. Based on publicly available

---

<sup>11</sup> Rep. Harshbarger's periodic transaction report, *supra* note 1.

<sup>12</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *Training*, <https://ethics.house.gov/training>.

<sup>13</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, <https://ethics.house.gov/legislation/schedule/faqs-about-training>.

<sup>14</sup> Rep. Harshbarger's first day in office was Jan. 3, 2021.

<sup>15</sup> U.S. HOUSE OF REPRESENTATIVES COMM. ON ETHICS, *FAQs About Training*, *supra* note 11.

<sup>16</sup> *Id*; Rep. Harshbarger's periodic transaction report, *supra* note 1.

information, it is unclear whether one reason for the late filings was an attempt to avoid scrutiny of trades connected with non-public information or with potential conflicts of interest.

Rep. Harshbarger likely knew of the public backlash suffered by those who disclosed stock trades. High-profile insider trading allegations engulfed several senators in March 2020 and became widely publicized.<sup>17</sup> These allegations of STOCK Act violations were all based on information disclosed in PTRs. Rep. Harshbarger's immediate predecessor, Rep. Phil Roe, also faced scrutiny for his stock trades during the early months of the pandemic.<sup>18</sup> Later in 2020, another scandal involving STOCK Act violations came to light: Rep. Donna Shalala failed to file PTRs for numerous transactions.<sup>19</sup> Considering that the requirement for PTRs in Congress was headline news throughout 2020, it seems likely she was well aware of the potential scrutiny of stock trades disclosed in PTRs.

Rep. Harshbarger cannot excuse her failure to report with a claim that it she was unfamiliar with the financial disclosure requirements. An OCE preliminary review can gather information to determine whether Rep. Harshbarger knowingly violated the STOCK Act.

## Conclusion

The STOCK Act requires members of Congress to timely file PTRs for any individual stock trades.<sup>20</sup> Based on the available facts, there is probable

---

<sup>17</sup> See e.g., Aruna Viswanatha & Dave Michaels, *Justice Department Investigating Lawmakers for Possible Insider Trading*, WALL ST. J (Mar. 31, 2020), [https://www.wsj.com/articles/justice-department-investigating-lawmakers-for-possible-insider-trading-11585586365?mod=article\\_inline](https://www.wsj.com/articles/justice-department-investigating-lawmakers-for-possible-insider-trading-11585586365?mod=article_inline).

<sup>18</sup> Jeff Keeling & Blake Lipton, *Roe's stock trades raise eyebrows after paper's investigation*, WJLH (May 27, 2020), <https://www.wjhl.com/news/local/roe-stock-trades-raise-eyebrows-after-papers-investigation/>.

<sup>19</sup> Alex Daugherty, *Donna Shalala, again, failed to disclose stock sales in violation of federal law*, MIAMI HERALD (Sept. 28, 2020), <https://www.miamiherald.com/news/politics-government/article246072375.html>. Rep. Shalala reportedly paid a \$1,200 fine after describing the omission as the result of trades made to establish a blind trust in coordination with the Committee on Ethics. In contrast, the current evidence does not suggest that Rep. Harshbarger's failure to report should only result in a small fine because she does not have a blind trust and has not stated that she made trades in connection with advice from the Committee on Ethics.

<sup>20</sup> P.L. 112-105, *supra* note 3; see U.S. HOUSE COMM. ON ETHICS, Instruction Guide, Financial Disclosure Statements and Periodic Transaction Reports Calendar Year 2019 at 41, *available at* <https://ethics.house.gov/sites/ethics.house.gov/files/documents/CY%202019%20Instruction%20Guide%20for%20Financial%20Disclosure%20Statements%20and%20PTRs.pdf> (Stating that the relevant factor for disclosure is ownership of the stock: "In general, you must report on a PTR each purchase, sale, or exchange involving stocks, bonds, commodities futures, or other

cause to believe that Rep. Harshbarger was aware of this requirement, and her failure to timely file the transaction reports violates the STOCK Act.

CLC respectfully requests that OCE open a preliminary review to determine whether Rep. Harshbarger's nondisclosure was an intentional violation of the STOCK Act and House rules.

We acknowledge that 18 U.S.C. § 1001 applies to the information provided.

Sincerely,

\_\_\_\_\_/s/\_\_\_\_\_  
Kedric L. Payne  
General Counsel and Senior Director,  
Ethics

\_\_\_\_\_/s/\_\_\_\_\_  
Delaney N. Marsco  
Senior Legal Counsel, Ethics

---

securities **owned wholly or in part by you**, your spouse, or your dependent child when the amount of the transaction exceeds \$1,000." (emphasis added).