



TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES



TEXAS ETHICS COMMISSION
JIM GRAHAM, CHAIR

DECEMBER 2010

TEXAS ETHICS COMMISSION
RECOMMENDATIONS FOR STATUTORY CHANGES
TO THE 82ND TEXAS LEGISLATURE
PURSUANT TO GOVERNMENT CODE § 571.073

TEXAS ETHICS COMMISSION

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DECEMBER 2010

TASK FORCE RECOMMENDATIONS

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**Texas Ethics Commission
Recommendations for Statutory Changes
82nd Legislative Session**

Recommendations are made pursuant to Section 571.073(3) of the Government Code.

Attached for your reference are the relevant statutes and rules. (Exhibit A, pages 9-28).

Recommendation No. 1: Prohibition on Direct Campaign Expenditures

In light of the January 2010 United States Supreme Court opinion in the case of *Citizens United v. Federal Election Commission (Citizens United)*, amend Sections 253.002 and 253.094 of the Election Code relating to the prohibition on direct campaign expenditures.

Background: In *Citizens United*, the court ruled that a federal law restricting “corporate independent expenditures” was unconstitutional. (The text of *Citizens United* may be found at <http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>.) Although a federal statute was at issue in *Citizens United*, its holding raised the question of whether it rendered unconstitutional the state prohibition on corporations making direct campaign expenditures to support or oppose a candidate for elective office. In April 2010, the commission issued Ethics Advisory Opinion No. 489 in which it determined that in light of *Citizens United*, and in accordance with the legislature’s intent that statutes be enforced in compliance with the constitutions of this state and the United States, the commission cannot enforce Sections 253.002 or 253.094 of the Election Code to prohibit a corporation or labor organization from making a direct campaign expenditure or enforce Section 253.002 of the Election Code to prohibit any other person from making a direct campaign expenditure. (Exhibit B, pages 29-34).

POSSIBLE OPTIONS

1. Repeal Section 253.002 of the Election Code.
2. Amend Section 253.094 of the Election Code by striking the word “political expenditure” from subsections (a) and (b).

Recommendation No. 2: Disclosure of Direct Campaign Expenditures

In light of the January 2010 United States Supreme Court opinion in the case of *Citizens United v. Federal Election Commission (Citizens United)*, amend Title 15 of the Election Code to specifically require the disclosure of direct campaign expenditures that were prohibited before *Citizens United*. (The text of *Citizens United* may be found at <http://www.supremecourtus.gov/opinions/09pdf/08-205.pdf>.)

Background: As noted in the previous recommendation, in response to *Citizens United* the commission issued Ethics Advisory Opinion No. 489 (EAO 489) in which it determined that

the commission cannot enforce the provisions in Title 15 of the Election Code that prohibit a corporation, labor organization, or other person from making certain direct campaign expenditures. (Exhibit B, pages 29-34). Title 15 does not specifically require disclosure of such expenditures because it simultaneously prohibits them. Consequently, a gap or ambiguity in the campaign finance reporting scheme was created. For the reasoning articulated in EAO 489, the commission determined that a corporation, labor organization, or other person that makes such expenditures must comply with the disclosure requirements that apply to an individual under Section 253.062 of the Election Code. In August 2010, the commission adopted Ethics Commission Rule § 22.6 relating to the disclosure of direct campaign expenditures. (Exhibit C, page 35).

POSSIBLE OPTION

Amend the Election Code to require the disclosure of direct campaign expenditures that were prohibited before *Citizens United*. An example of how this may be accomplished is Texas Ethics Commission Rule § 22.6. (Exhibit C, page 35).

Recommendation No. 3: Public Inspection of Records

Clarification of Section 254.0402 of the Election Code, which prohibits an authority with whom campaign finance reports are filed to require a person examining a report to provide any information or identification. Some local filing authorities require that a person requesting to examine a campaign finance report submit an open records request under the Public Information Act.

Generally, requiring an individual to submit an open records request may result in asking the person to provide information or identification, which would be prohibited by Section 254.0402. Additionally, requiring the submission of an open records request in connection with pre-election reports may result in the public not having access to information until after the election.

POSSIBLE OPTION

Amend Section 254.0402 of the Election Code to explicitly state that a report filed under Chapter 254 of the Election Code must be made available to the public during the regular business hours of the report's custodian.

Recommendation No. 4: Contributions Maintained

Clarification of Sections 254.031(a)(8) and 254.0611(a)(1) of the Election Code, which require the disclosure of the total amount of contributions accepted and maintained in an account. Contributions that are accepted but not maintained in an account (i.e.,

contributions in the form of cash or a check that are accepted but never deposited) are not required to be included in the total.¹

POSSIBLE OPTION

Amend Sections 254.031(a)(8) and 254.0611(a)(1) of the Election Code to require that political contributions “on hand” be disclosed regardless of whether or not deposited in an account.

Recommendation No. 5: Amount Reported as Loan to Campaign

Clarification as to whether the legislature intended to allow a candidate or officeholder to report as a loan to his or her campaign an amount greater than what is expended in the reporting period. In other words, did the legislature intend to allow candidates and officeholders to report a \$500,000 loan from themselves in a reporting period in which they do not spend any of that amount (or less than that amount)?

The law currently provides two methods for reporting political expenditures made from personal funds for which a candidate or officeholder intends to seek reimbursement. The easier of the two methods is to report a political expenditure from personal funds on Schedule G (used to report political expenditures made from personal funds), and indicate that reimbursement is intended. ELEC. CODE § 253.035(h).

In the alternative, the candidate may report the amount *expended* as a loan. ELEC. CODE § 253.0351(a). (The candidate or officeholder would then report the expenditures made from those funds.)

Based on the plain wording of the statute, the commission has consistently interpreted the law to mean that a candidate or officeholder may report as a loan only the amount *expended* in the reporting period.²

¹ Those contributions are required to be disclosed on the reporting schedule used to report contributions accepted during the reporting period but they would not be added to the “contributions maintained total.” ELEC. CODE § 254.031(a)(1).

² In Ethics Advisory Opinion No. 258 (1995), the commission stated that if a candidate transfers money from a personal account to an account used for candidate purposes, no reportable transaction has occurred.

In Ethics Advisory Opinion 391 (1998), the commission stated:

The requestor specifically asks about “loans” he made to his campaign. Technically speaking, a candidate does not “loan” himself money. Ethics Advisory Opinion No. 258 (1995). It is important to note that a candidate or officeholder may not pay himself or herself interest on money that he or she has merely transferred from a “personal account” to a “political account.” Such a transfer does not effect a change in the personal nature of the funds and is not, by itself, an “expenditure.” Rather, a political expenditure from the transferred personal funds would occur if a payment for political purposes were made from the transferred funds. *See generally* ELEC. CODE § 253.0351 (allowing candidate or

Recommendation No. 6: Disclosing Purchase of Investments

Clarification regarding whether the use of political contributions to purchase an investment is required to be reported as a political expenditure under Section 254.031 of the Election Code. The commission staff's longstanding interpretation has been that a purchase of an investment is reportable as a political expenditure.³

POSSIBLE OPTION

Amend the statute to explicitly require the disclosure of the use of political contributions to purchase an investment. A way to accomplish this is by adding a new section to Chapter 254 of the Election Code that provides as follows: The use of political funds to purchase an investment is a reportable political expenditure.

Recommendation No. 7: Disclosing Liquidation of Investments

The law does not require a person to disclose the liquidation of investments purchased with political contributions. A person filing a campaign finance report may nonetheless disclose that information on a "Credits" schedule, which was created by the commission to allow persons to disclose information that is not required to be disclosed.

POSSIBLE OPTION

Amend the statute to require the disclosure of the liquidation of investments purchased with political contributions. A way to accomplish this is by adding a new section to Chapter 254 of the Election Code that provides as follows: The liquidation of an investment purchased with political contributions is required to be disclosed as a credit.

Recommendation No. 8: Definition of Measure

Clarification of Section 251.001(19) of the Election Code, which defines "measure" as a question or proposal submitted in an election for an expression of the voters' will and includes the circulation *and* submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters' will.

officeholder to report political expenditure from personal funds as "loan"); Ethics Advisory Opinion No. 230 (1994).

³ The term expenditure is defined in Section 251.001(6) of the Election Code. The terms political expenditure, campaign expenditure, and officeholder expenditure are defined in Sections 251.001(10), (7), and (4) of the Election Code, respectively.

The question that often arises here is whether the definition of measure includes a petition that is circulated but not submitted. Staff's cautious view is that such a petition falls within the definition. However, the law could be read to include only a petition that is both circulated and submitted. Below is an example of the practical implication of the different interpretations.

A group made expenditures totaling \$2,000 to circulate a petition in connection with a recall election. The group had every intention to submit the petition. However, for a reason unforeseen to the group, the group did not submit the petition. Was the group required to register as a political committee? Based on staff's cautious view, the answer is YES because the group exceeded \$500 in political expenditures. *See* Sections 251.001(12) and (7), and 253.031(b), Election Code. However, the answer would be NO, if for a petition to fall within the definition of "measure" it must have been both circulated *and* submitted.

POSSIBLE OPTION

Amend the definition of "measure" by changing the "and" to "or" to ensure disclosure of expenditures made to circulate a petition regardless of whether the petition is submitted.

Recommendation No. 9: Availability of Electronic Reports on the Internet

Section 254.0401(b) of the Election Code creates a waiting period before certain reports may be posted on the commission website. Basically, before certain reports may be posted, each candidate (and related committee) for the particular office must have filed a report.⁴

Candidates often release a report to some members of the press. This results in calls from members of the press who did not receive a copy of the report from the candidate. This also results in calls from the public wanting to view a report that is mentioned in a news story but that is not yet posted on the commission website.

Allowing the commission to make reports Internet visible by the filing deadline regardless of whether a particular candidate has filed a report would give the public access to important information before the election. Candidates who do not timely file are subject to a penalty.

⁴ Applies only to reports filed by major party candidates (nominated by or seeking nomination of a political party required to nominate candidates by primary election). Also, regardless of whether each candidate files a report, the commission may make semiannual reports and 30-day before the election reports Internet visible on the 21st day after the deadline, and 8-day before the election reports Internet visible on the 4th day after the deadline.

POSSIBLE OPTION

Amend Section 254.0401(b) of the Election Code to allow the commission to make 30 and 8 day pre-election reports Internet visible the earlier of the date that each candidate for the office files a required report or the date of the filing deadline.

Recommendation No. 10: Fine Amount for 8-Day Before Runoff Report

Candidates and political committees involved in an election are required to file an 8-day before election report. ELEC. CODE §§ 254.064(c), 254.124(c), and 254.154(c). The late filing penalty for this report is \$500 for the first day the report is late and \$100 for each day thereafter. ELEC. CODE § 254.042(b). Corrections to this report are subject to the same fine amount. GOV'T CODE § 571.0771.

Different provisions require candidates and political committees involved in a *runoff election* to file an 8-day before *runoff* report. ELEC. CODE §§ 254.064(e), 254.124(e), and 254.154(e). The late filing penalty for the runoff report is a flat \$500. ELEC. CODE § 254.042(b). Unlike other 8-day reports, corrections to the runoff report are not subject to a fine if the filer swears that any error or omission in the report as originally filed was made in good faith and that the correction was filed not later than the 14th business day after the date the filer learns that the report as originally filed is inaccurate or incomplete. GOV'T CODE § 571.0771.

The question that often arises is whether the fine amount for an 8-day before runoff report should match the fine amount for other 8-day reports.

POSSIBLE OPTIONS

1. Amend Section 254.042(b) of the Election Code to make the late filing penalty for 8-day runoff reports the same as the late filing penalty for other 8-day reports. Possible amendments to Section 254.042(b) of the Election Code are found in Exhibit D, page 36.
2. Amend Section 571.0771(b) of the Government Code to make the late filing penalty for corrected 8-day runoff reports the same as the late filing penalty for other corrected 8-day reports. Possible amendments to Section 571.0771(b) of the Government Code are found in Exhibit E, page 37.

Recommendation No. 11: Documentation from Out-of-State Political Committees

Before a candidate, officeholder, or political committee accepts a contribution from an out-of-state political committee (OOS PAC), they are required to obtain certain documentation from the OOS PAC. ELEC. CODE § 253.032(a). A report filed by a filer who accepts such a contribution is required to include the documentation with their campaign finance report. ELEC. CODE § 253.032(d).

In 2000, after the legislative mandate that certain reports be filed electronically, the commission adopted a rule to facilitate the transition from paper to electronic filing. Under the rule, a person who files a report electronically and who accepts a political contribution from an OOS PAC required to register with the Federal Election Commission (FEC) may enter the OOS PAC's FEC ID# in the software field created for that information in lieu of mailing the paper documentation. Section 20.29, Ethics Commission Rules. Reports filed by an OOS PAC that is registered with the FEC are readily available on the FEC's website.

Persons who file a paper report continue to be required to mail OOS PAC documentation with a report. The question that often arises is whether paper filers who accept a political contribution from an OOS PAC registered with the FEC should be allowed to provide the FEC ID# in lieu of mailing paper documentation.

POSSIBLE OPTION

Amend Section 253.032 of the Election Code to allow a person who accepts a political contribution from an OOS PAC registered with the FEC to provide the FEC ID# on the report in lieu of mailing the paper documentation. A possible amendment to Section 253.032 of the Election Code is found in Exhibit F, pages 39-40.

Recommendation No. 12: Notice to Filers Regarding Late Reports

Section 254.042 of the Election Code requires the commission to notify a filer that a report is late. The second notice regarding lateness is required to be sent by registered mail. The current cost of registered mail is approximately \$11.04. Due to the increase in postage and budgetary constraints, the commission would like to be allowed to send the second notice by other methods of delivery such as by certified mail, the cost of which is currently \$3.24.

POSSIBLE OPTION

Amend Section 254.042 of the Election Code to allow the commission to provide notice by certified mail.

Recommendation No. 13: Mailing of Sworn Complaint Notices

Section 571.032 of the Government Code requires certain sworn complaint notices to be mailed by registered or certified mail, restricted delivery, return receipt requested. The fees for such notices are as follows: registered mail is \$11.04, certified mail is \$3.24, restricted delivery is \$4.50, and return receipt is \$2.78. In addition to that is the cost of the weight of the envelope. Due to the increase in sworn complaints and the increase in postage, sending notices in the required method has resulted in budgetary constraints.

POSSIBLE OPTION

Amend Section 571.032 of the Government Code as follows:

1. Provide that the first notice to the respondent must be mailed as required by current law (registered or certified mail, restricted delivery, return receipt requested) and to allow the commission to send future notices by regular mail;
2. Allow the commission to send all quarterly status letters by electronic mail; and
3. Allow the commission to send all notices to the complainant by electronic mail or regular mail.

Possible amendments to Section 571.032 of the Government Code are found in Exhibit G, page 41.

EXHIBIT A

TEXAS ETHICS COMMISSION RULES

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

§ 20.29. Information About Out-of-State Committees

(a) A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission shall either:

(1) enter the out-of-state committee's federal PAC identification number in the appropriate place on the report; or

(2) timely file a certified copy of the out-of-state committee's statement of organization that is filed with the Federal Election Commission.

(b) A person who files a report with the commission by electronic transfer and who accepts political contributions from an out-of-state political committee that is not required to file its statement of organization with the Federal Elections Commission shall either:

(1) enter the information required by § 253.032(a)(1) or (e)(1), Election Code, as applicable, on the report filed by electronic transfer; or

(2) timely file a paper copy of the information required by § 253.032(a)(1) or (e)(1), Election Code, as applicable.

(c) Except as provided by subsection (d) of this section, § 251.007, Election Code, applies to a document filed under subsection (a)(2) or (b)(2) of this section.

(d) A document filed under subsection (a)(2) or (b)(2) of this section for a pre-election report is timely filed if **it is** received by the commission no later than the report due date. A pre-election report includes reports due 30-days and 8-days before an election, reports due before a runoff election, and special reports due before an election.

Subchapter B: GENERAL REPORTING RULES

§ 20.50. Total Political Contributions Maintained

(a) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained in one or more accounts includes the following:

(1) Balance on deposit in banks, savings and loan institutions and other depository institutions; and

(2) The present value of any investments that can be readily converted to cash, such as certificates of deposit, money market accounts, stocks, bonds, treasury bills, etc.

(b) For purposes of Election Code §§ 254.031(a)(8) and 254.0611(a)(1), the total amount of political contributions maintained does not include personal funds that the filer intends to use for political expenditures.

TITLE 15. REGULATING POLITICAL FUNDS AND CAMPAIGNS

CHAPTER 251. GENERAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

§ 251.001. Definitions

In this title:

(1) “Candidate” means a person who knowingly and willingly takes affirmative action for the purpose of gaining nomination or election to public office or for the purpose of satisfying financial obligations incurred by the person in connection with the campaign for nomination or election. Examples of affirmative action include:

(A) the filing of a campaign treasurer appointment, except that the filing does not constitute candidacy or an announcement of candidacy for purposes of the automatic resignation provisions of Article XVI, Section 65, or Article XI, Section 11, of the Texas Constitution;

(B) the filing of an application for a place on the ballot;

(C) the filing of an application for nomination by convention;

(D) the filing of a declaration of intent to become an independent candidate or a declaration of write-in candidacy;

(E) the making of a public announcement of a definite intent to run for public office in a particular election, regardless of whether the specific office is mentioned in the announcement;

(F) before a public announcement of intent, the making of a statement of definite intent to run for public office and the soliciting of support by letter or other mode of communication;

(G) the soliciting or accepting of a campaign contribution or the making of a campaign expenditure; and

(H) the seeking of the nomination of an executive committee of a political party to fill a vacancy.

(2) “Contribution” means a direct or indirect transfer of money, goods, services, or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a transfer. The term includes a loan or extension of credit, other than those expressly excluded by this subdivision, and a

guarantee of a loan or extension of credit, including a loan described by this subdivision. The term does not include:

(A) a loan made in the due course of business by a corporation that is legally engaged in the business of lending money and that has conducted the business continuously for more than one year before the loan is made; or

(B) an expenditure required to be reported under Section 305.006(b), Government Code.

(3) “Campaign contribution” means a contribution to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. Whether a contribution is made before, during, or after an election does not affect its status as a campaign contribution.

(4) “Officeholder contribution” means a contribution to an officeholder or political committee that is offered or given with the intent that it be used to defray expenses that:

(A) are incurred by the officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(5) “Political contribution” means a campaign contribution or an officeholder contribution.

(6) “Expenditure” means a payment of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment.

(7) “Campaign expenditure” means an expenditure made by any person in connection with a campaign for an elective office or on a measure. Whether an expenditure is made before, during, or after an election does not affect its status as a campaign expenditure.

(8) “Direct campaign expenditure” means a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure.

(9) “Officeholder expenditure” means an expenditure made by any person to defray expenses that:

(A) are incurred by an officeholder in performing a duty or engaging in an activity in connection with the office; and

(B) are not reimbursable with public money.

(10) “Political expenditure” means a campaign expenditure or an officeholder expenditure.

(11) “Reportable activity” means a political contribution, political expenditure, or other activity required to be reported under this title.

(12) “Political committee” means a group of persons that has as a principal purpose accepting political contributions or making political expenditures.

(13) “Specific-purpose committee” means a political committee that does not have among its principal purposes those of a general-purpose committee but does have among its principal purposes:

(A) supporting or opposing one or more:

(i) candidates, all of whom are identified and are seeking offices that are known;
or

(ii) measures, all of which are identified;

(B) assisting one or more officeholders, all of whom are identified; or

(C) supporting or opposing only one candidate who is unidentified or who is seeking an office that is unknown.

(14) “General-purpose committee” means a political committee that has among its principal purposes:

(A) supporting or opposing:

(i) two or more candidates who are unidentified or are seeking offices that are unknown; or

(ii) one or more measures that are unidentified; or

(B) assisting two or more officeholders who are unidentified.

(15) “Out-of-state political committee” means a political committee that:

(A) makes political expenditures outside this state; and

(B) in the 12 months immediately preceding the making of a political expenditure by the committee inside this state (other than an expenditure made in connection with a campaign for a federal office or made for a federal officeholder), makes 80 percent or more of the committee’s total political expenditures in any combination of elections outside this state and federal offices not voted on in this state.

(16) “Political advertising” means a communication supporting or opposing a candidate for nomination or election to a public office or office of a political party, a political party, a public officer, or a measure that:

(A) in return for consideration, is published in a newspaper, magazine, or other periodical or is broadcast by radio or television; or

(B) appears:

(i) in a pamphlet, circular, flier, billboard or other sign, bumper sticker, or similar form of written communication; or

(ii) on an Internet website.

(17) “Campaign communication” means a written or oral communication relating to a campaign for nomination or election to public office or office of a political party or to a campaign on a measure.

(18) “Labor organization” means an agency, committee, or any other organization in which employees participate that exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(19) “Measure” means a question or proposal submitted in an election for an expression of the voters’ will and includes the circulation and submission of a petition to determine whether a question or proposal is required to be submitted in an election for an expression of the voters’ will.

(20) “Commission” means the Texas Ethics Commission.

**CHAPTER 253. RESTRICTIONS ON CONTRIBUTIONS
AND EXPENDITURES**

SUBCHAPTER A. GENERAL RESTRICTIONS

§ 253.002. Unlawful Direct Campaign Expenditure

(a) A person may not knowingly make or authorize a direct campaign expenditure.

(b) This section does not apply to:

(1) an individual making an expenditure authorized by Subchapter C;

(2) a corporation or labor organization making an expenditure authorized by Subchapter D;

(3) a candidate making or authorizing an expenditure for the candidate's own election;

(4) a political committee; or

(5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

(c) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

**SUBCHAPTER B. CANDIDATES, OFFICEHOLDERS,
AND POLITICAL COMMITTEES**

§ 253.031. Contribution and Expenditure Without Campaign Treasurer Prohibited

(a) A candidate may not knowingly accept a campaign contribution or make or authorize a campaign expenditure at a time when a campaign treasurer appointment for the candidate is not in effect.

(b) A political committee may not knowingly accept political contributions totaling more than \$500 or make or authorize political expenditures totaling more than \$500 at a time when a campaign treasurer appointment for the committee is not in effect.

(c) A political committee may not knowingly make or authorize a campaign contribution or campaign expenditure supporting or opposing a candidate for an office specified by Section 252.005(1) in a primary or general election unless the committee's campaign treasurer appointment has been filed not later than the 30th day before the appropriate election day.

(d) This section does not apply to a political party's county executive committee that accepts political contributions or makes political expenditures, except that:

(1) a county executive committee that accepts political contributions or makes political expenditures shall maintain the records required by Section 254.001; and

(2) a county executive committee that accepts political contributions or makes political expenditures that, in the aggregate, exceed \$25,000 in a calendar year shall file:

(A) a campaign treasurer appointment as required by Section 252.001 not later than the 15th day after the date that amount is exceeded; and

(B) the reports required by Subchapter F, Chapter 254, including in the political committee's first report all political contributions accepted and all political expenditures made before the effective date of the campaign treasurer appointment.

(e) This section does not apply to an out-of-state political committee unless the committee is subject to Chapter 252 under Section 251.005.

(f) A person who violates this section commits an offense. An offense under this section is a Class A misdemeanor.

§ 253.035. Restrictions on Personal Use of Contributions

(a) A person who accepts a political contribution as a candidate or officeholder may not convert the contribution to personal use.

(b) A specific-purpose committee that accepts a political contribution may not convert the contribution to the personal use of a candidate, officeholder, or former candidate or officeholder.

(c) The prohibitions prescribed by Subsections (a) and (b) include the personal use of an asset purchased with the contribution and the personal use of any interest and other income earned on the contribution.

(d) In this section, "personal use" means a use that primarily furthers individual or family purposes not connected with the performance of duties or activities as a candidate for or holder of a public office. The term does not include:

(1) payments made to defray ordinary and necessary expenses incurred in connection with activities as a candidate or in connection with the performance of duties or activities as a public officeholder, including payment of rent, utility, and other reasonable housing or household expenses incurred in maintaining a residence in

Travis County by members of the legislature who do not ordinarily reside in Travis County, but excluding payments prohibited under Section 253.038; or

(2) payments of federal income taxes due on interest and other income earned on political contributions.

(e) Subsection (a) applies only to political contributions accepted on or after September 1, 1983. Subsection (b) applies only to political contributions accepted on or after September 1, 1987.

(f) A person who converts a political contribution to the person's personal use in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(g) A specific-purpose committee that converts a political contribution to the personal use of a candidate, officeholder, or former candidate or officeholder in violation of this section is civilly liable to the state for an amount equal to the amount of the converted contribution plus reasonable court costs.

(h) Except as provided by Section 253.0351 or 253.042, a candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may reimburse those personal funds from political contributions in the amount of those expenditures only if:

(1) the expenditures from personal funds were fully reported as political expenditures, including the payees, dates, purposes, and amounts of the expenditures, in the report required to be filed under this title that covers the period in which the expenditures from personal funds were made; and

(2) the report on which the expenditures from personal funds are disclosed clearly designates those expenditures as having been made from the person's personal funds and that the expenditures are subject to reimbursement.

(i) "Personal use" does not include the use of contributions for:

(1) defending a criminal action or prosecuting or defending a civil action brought by or against the person in the person's status as a candidate or officeholder; or

(2) participating in an election contest or participating in a civil action to determine a person's eligibility to be a candidate for, or elected or appointed to, a public office in this state.

§ 253.0351. Loans From Personal Funds

(a) A candidate or officeholder who makes political expenditures from the candidate's or officeholder's personal funds may report the amount expended as a loan and may reimburse those personal funds from political contributions in the amount of the reported loan.

(b) Section 253.035(h) applies if the person does not report an amount as a loan as authorized by Subsection (a).

§ 253.062. Direct Expenditure Exceeding \$100

(a) Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates or measures if:

(1) the individual complies with Chapter 254 as if the individual were a campaign treasurer of a political committee; and

(2) the individual receives no reimbursement for the expenditures.

(b) An individual making expenditures under this section is not required to file a campaign treasurer appointment.

SUBCHAPTER D. CORPORATIONS AND LABOR ORGANIZATIONS

§ 253.094. Contributions and Expenditures Prohibited

(a) A corporation or labor organization may not make a political contribution or political expenditure that is not authorized by this subchapter.

(b) A corporation or labor organization may not make a political contribution or political expenditure in connection with a recall election, including the circulation and submission of a petition to call an election.

(c) A person who violates this section commits an offense. An offense under this section is a felony of the third degree.

CHAPTER 254. POLITICAL REPORTING

SUBCHAPTER B. POLITICAL REPORTING GENERALLY

§ 254.031. General Contents of Reports

(a) Except as otherwise provided by this chapter, each report filed under this chapter must include:

(1) the amount of political contributions from each person that in the aggregate exceed \$50 and that are accepted during the reporting period by the person or committee required to file a report under this chapter, the full name and address of the person making the contributions, and the dates of the contributions;

(2) the amount of loans that are made during the reporting period for campaign or officeholder purposes to the person or committee required to file the report and that in the aggregate exceed \$50, the dates the loans are made, the interest rate, the maturity date, the type of collateral for the loans, if any, the full name and address of the person or financial institution making the loans, the full name and address, principal occupation, and name of the employer of each guarantor of the loans, the amount of the loans guaranteed by each guarantor, and the aggregate principal amount of all outstanding loans as of the last day of the reporting period;

(3) the amount of political expenditures that in the aggregate exceed \$50 and that are made during the reporting period, the full name and address of the persons to whom the expenditures are made, and the dates and purposes of the expenditures;

(4) the amount of each payment made during the reporting period from a political contribution if the payment is not a political expenditure, the full name and address of the person to whom the payment is made, and the date and purpose of the payment;

(5) the total amount or a specific listing of the political contributions of \$50 or less accepted and the total amount or a specific listing of the political expenditures of \$50 or less made during the reporting period;

(6) the total amount of all political contributions accepted and the total amount of all political expenditures made during the reporting period;

(7) the name of each candidate or officeholder who benefits from a direct campaign expenditure made during the reporting period by the person or committee required to file the report, and the office sought or held, excluding a direct campaign expenditure that is made by the principal political committee of a political party on behalf of a slate of two or more nominees of that party; and

(8) as of the last day of a reporting period for which the person is required to file a report, the total amount of political contributions accepted, including interest or other

income on those contributions, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period.

(a-1) A *de minimis* error in calculating or reporting a cash balance under Subsection (a)(8) is not a violation of this section.

(b) If no reportable activity occurs during a reporting period, the person required to file a report shall indicate that fact in the report.

§ 254.0401. Availability of Electronic Reports on Internet

(a) The commission shall make each report filed with the commission under Section 254.036(b) available to the public on the Internet not later than the second business day after the date the report is filed.

Subsections (b) and (c) repealed by Acts 2003, 78th Leg., ch. 249, § 2.26.
Text of subsec. (b) as amended by Acts 2003, 78th Leg., ch. 567, § 1.

(b) Except as otherwise provided by this subsection, the commission shall make a report filed with the commission under Section 254.036(b) for a reporting deadline by any candidate for a particular office or by a specific-purpose committee for supporting or opposing only one candidate for a particular office available to the public on the Internet if each candidate for that office that is nominated by or seeking the nomination of a political party required to nominate candidates by primary election, and each specific-purpose committee for supporting or opposing only one candidate for that office that is nominated by or seeking the nomination of a political party required to nominate candidates by primary election, other than a candidate or committee to which Section 254.036(c) or (d) applies, has filed a report for that reporting deadline. Regardless of whether each candidate for a particular office that is nominated by or seeking the nomination of a political party required to nominate candidates by primary election, and each specific-purpose committee for supporting or opposing only one candidate for that office that is nominated by or seeking the nomination of a political party required to nominate candidates by primary election, has filed a report for a filing deadline, the commission shall make each report in connection with that office available on the Internet and by any other electronic means on:

(1) the 21st day after the date of the filing deadline, for a report other than a report required to be filed under Section 254.064(c); or

(2) the fourth day after the date of the filing deadline, for a report required to be filed under Section 254.064(c).

(d) The access allowed by this section to reports is in addition to the public's access to the information through other electronic or print distribution of the information.

(e) Before making a report filed under Section 254.036(b) available on the Internet, the commission shall remove each portion, other than city, state, and zip code, of the address of a person listed as having made a political contribution to the person filing the report. The address information removed must remain available on the report maintained in the commission's office but may not be available electronically at that office.

(f) The commission shall clearly state on the Internet website on which reports are provided under Subsection (b) that reports filed by an independent candidate, a third-party candidate, or a specific-purpose committee for supporting or opposing an independent or third-party candidate will not be available if the candidate or committee has not yet filed a report.

Added by Acts 1999, 76th Leg., ch. 1434, § 3, eff. Sept. 1, 1999. Amended by Acts 2003, 78th Leg., ch. 249, § 2.14, 2.26, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 567, § 1, eff. Sept. 1, 2003.

§ 254.0402. Public Inspection of Reports

(a) Notwithstanding Section 552.222(a), Government Code, the authority with whom a report is filed under this chapter may not require a person examining the report to provide any information or identification.

(b) The commission shall make information from reports filed with the commission under Section 254.036(b) available by electronic means, including:

- (1) providing access to computer terminals at the commission's office;
- (2) providing information on computer diskette for purchase at a reasonable cost; and
- (3) providing modem or other electronic access to the information.

§ 254.042. Civil Penalty for Late Report

(a) The commission shall determine from any available evidence whether a report required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report other than a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.123 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500. If a report under Section 254.064(c), 254.124(c), or 254.154(c) or the first report under Section 254.063 or 254.153 that is required to be filed following the primary or general election is determined to be late, the

person required to file the report is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

SUBCHAPTER C. REPORTING BY CANDIDATE

§ 254.0611. Additional Contents of Reports by Certain Judicial Candidates

(a) In addition to the contents required by Sections 254.031 and 254.061, each report by a candidate for a judicial office covered by Subchapter F, Chapter 253, must include:

(1) the total amount of political contributions, including interest or other income, maintained in one or more accounts in which political contributions are deposited as of the last day of the reporting period;

(2) for each individual from whom the person filing the report has accepted political contributions that in the aggregate exceed \$50 and that are accepted during the reporting period:

(A) the principal occupation and job title of the individual and the full name of the employer of the individual or of the law firm of which the individual or the individual's spouse is a member, if any; or

(B) if the individual is a child, the full name of the law firm of which either of the individual's parents is a member, if any;

(3) a specific listing of each asset valued at \$500 or more that was purchased with political contributions and on hand as of the last day of the reporting period;

(4) for each political contribution accepted by the person filing the report but not received as of the last day of the reporting period:

(A) the full name and address of the person making the contribution;

(B) the amount of the contribution; and

(C) the date of the contribution; and

(5) for each outstanding loan to the person filing the report as of the last day of the reporting period:

(A) the full name and address of the person or financial institution making the loan; and

(B) the full name and address of each guarantor of the loan other than the candidate.

(b) In this section:

(1) “Child” has the meaning assigned by Section 253.158.

(2) “Law firm” and “member” have the meanings assigned by Section 253.157.

§ 254.064. Additional Reports of Opposed Candidate

(a) In addition to other required reports, for each election in which a person is a candidate and has an opponent whose name is to appear on the ballot, the person shall file two reports.

(b) The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the candidate’s campaign treasurer appointment is filed or the first day after the period covered by the last report required to be filed under this chapter, as applicable, and continuing through the 40th day before election day.

(c) The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a person becomes an opposed candidate after a reporting period prescribed by Subsection (b) or (c), the person’s first report must be received by the authority with whom the report is required to be filed not later than the regular deadline for the report covering the period during which the person becomes an opposed candidate. The period covered by the first report begins the day the candidate’s campaign treasurer appointment is filed.

(e) In addition to other required reports, an opposed candidate in a runoff election shall file one report for that election. The runoff election report must be received by the authority with whom the report is required to be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

SUBCHAPTER E. REPORTING BY SPECIFIC-PURPOSE COMMITTEE

§ 254.124. Additional Reports of Committee for Supporting or Opposing Candidate or Measure

(a) In addition to other required reports, for each election in which a specific-purpose committee supports or opposes a candidate or measure, the committee's campaign treasurer shall file two reports.

(b) The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a specific-purpose committee supports or opposes a candidate or measure in an election after a reporting period prescribed by Subsection (b) or (c), the first report must be received by the authority with whom the report is required to be filed not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a specific-purpose committee that supports or opposes a candidate in a runoff election shall file one report for the runoff election. The runoff election report must be received by the authority with whom the report is required to be filed not later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

(f) This section does not apply to a specific-purpose committee supporting only candidates who do not have opponents whose names are to appear on the ballot.

SUBCHAPTER F. REPORTING BY GENERAL-PURPOSE COMMITTEE

§ 254.154. Additional Reports of Committee Involved in Election

(a) In addition to other required reports, for each election in which a general-purpose committee is involved, the committee's campaign treasurer shall file two reports.

(b) The first report must be received by the authority with whom the report is required to be filed not later than the 30th day before election day. The report covers the period beginning the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable, and continuing through the 40th day before election day.

(c) The second report must be received by the authority with whom the report is required to be filed not later than the eighth day before election day. The report covers the period beginning the 39th day before election day and continuing through the 10th day before election day.

(d) If a general-purpose committee becomes involved in an election after a reporting period prescribed by Subsection (b) or (c), the first report must be received by the authority with whom the report is required to be filed not later than the regular deadline for the report covering the period during which the committee becomes involved in the election. The period covered by the first report begins the day the committee's campaign treasurer appointment is filed or the first day after the period covered by the committee's last required report, as applicable.

(e) In addition to other required reports, the campaign treasurer of a general-purpose committee involved in a runoff election shall file one report for the runoff election. The runoff election report must be received by the authority with whom the report is required to be filed not earlier than the 10th day or later than the eighth day before runoff election day. The report covers the period beginning the ninth day before the date of the main election and continuing through the 10th day before runoff election day.

**CHAPTER 571. GOVERNMENT CODE
TEXAS ETHICS COMMISSION**

SUBCHAPTER B. ADMINISTRATIVE PROVISIONS

§ 571.032. Mailing of Notices, Decisions, and Reports

(a) Except as provided by Subsection (b), each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested.

(b) After written notice under Section 571.123(b) regarding the filing of a sworn complaint has been sent to a person in the manner required by Subsection (a), the commission may send the person any additional notices regarding the complaint by regular mail unless the person has notified the commission to send all notices regarding the complaint by registered or certified mail, restricted delivery, return receipt requested.

SUBCHAPTER C. GENERAL POWERS AND DUTIES

§ 571.0771. Corrected Statements, Registrations, and Reports Considered Timely Filed

(a) A statement, registration, or report required that is filed with the commission is not considered to be late for purposes of any applicable civil penalty for late filing of the statement, registration, or report if:

(1) any error or omission in the statement, registration, or report as originally filed was made in good faith; and

(2) not later than the 14th business day after the date the person filing the statement, registration, or report learns that the statement, registration, or report as originally filed is inaccurate or incomplete, the person files:

(A) a corrected or amended statement, registration, or report; and

(B) an affidavit stating that the error or omission in the original statement, registration, or report was made in good faith.

(b) Subsection (a) does not apply to:

(1) a penalty imposed under Section 571.069 or Subchapter E or F; or

(2) a report required to be filed under Section 254.038, 254.039, 254.064(c), 254.124(c), or 254.154(c), Election Code.

Subsections (b-1) and (b-2) repealed by Acts 2007, 80th Leg., R.S., H.B. 2589, § 2, eff. Sept. 1, 2007.

(c) A report required to be filed under Section 254.064(c), 254.124(c), or 254.154(c), Election Code, is not considered to be late for purposes of any applicable civil penalty for late filing of the report if:

(1) the report as originally filed substantially complies with the applicable law, as determined by the commission;

(2) any error or omission in the report as originally filed was made in good faith; and

(3) not later than the 14th business day after the date the person filing the report learns that the report as originally filed is inaccurate or incomplete, the person files:

(A) corrected or amended report; and

(B) an affidavit stating that the error or omission in the original report was made in good faith.

EXHIBIT B

TEXAS ETHICS COMMISSION

P.O. Box 12070, Capitol Station
Austin, Texas 78711-2070

Paula M. Mendoza
Chair

Jim Graham
Vice Chair

David A. Reisman
Executive Director



Commissioners

Jim Clancy
Wilhelmina Delco
Tom Harrison
George H. "Trey" Henderson, III
Tom Ramsay
Chase Untermeyer

ETHICS ADVISORY OPINION NO. 489

April 21, 2010

Whether, in light of the United States Supreme Court ruling in Citizens United v. Federal Election Commission, the Texas Ethics Commission can enforce the prohibition on direct campaign expenditures, whether the Texas Ethics Commission can enforce the requirements to include certain disclosures on political advertising, and whether disclosure of certain direct campaign expenditures is required. (SP-10)

On January 21, 2010, the United States Supreme Court issued an opinion in the case of *Citizens United v. Federal Election Commission* (hereafter, *Citizens United*), in which it considered the constitutionality of certain federal statutes. *Citizens United v. FEC*, 558 U.S. ____ (2010).¹ In part, the decision held that a certain federal statutory restriction on "corporate independent expenditures" was unconstitutional. *Id.* at 50. The Court also found no constitutional impediment to the application of federal statutory requirements to include disclosures in "electioneering communications." *Id.* at 55-6. In this opinion, we will consider, in light of *Citizens United* and the Texas Legislature's intent that statutes be enforced constitutionally, whether certain laws under our jurisdiction prohibit direct campaign expenditures and whether the laws under our jurisdiction requiring certain disclosures on political advertising were impacted by the decision. In addition, we will consider whether the laws under our jurisdiction require disclosure of certain direct campaign expenditures.

The Court in *Citizens United* addressed a federal law that, in part, prohibited a corporation from making direct contributions to candidates or independent expenditures that expressly advocate the election or defeat of a candidate in connection with an election to a federal political office. *Id.* at 3 (citing 2 U.S.C. § 441b). Under the federal law considered by the Court, the term "independent expenditure" was defined as an expenditure by a person expressly advocating the election or defeat of a clearly identified candidate and that is not made in concert or cooperation with or at the request or suggestion of such candidate, the candidate's authorized political committee, or their agents, or a political party committee or its agents. 2 U.S.C. § 431(17). The Court held that the federal prohibition on corporations making independent expenditures violated the First Amendment of the United States Constitution and was therefore unconstitutional. *Citizens United*, 558 U.S. at 50.

¹ Page numbers in citations to *Citizens United* refer to the slip opinion, No. 08-205 (U.S. Jan 21, 2010).

Prohibition on Direct Campaign Expenditures

As a general rule, Texas campaign finance law, located in title 15 of the Election Code, prohibits corporations² and labor organizations from making political contributions³ or political expenditures.⁴ Elec. Code § 253.094. There are several statutory exceptions to this prohibition.⁵ See, e.g., *Id.* §§ 253.097 (corporation or labor organization may make direct campaign expenditures in connection with election on measure), 253.098 (corporation or labor organization may make direct campaign expenditures to communicate directly with its stockholders or members, as applicable, or their families), and 253.100 (corporation or labor organization may make political expenditures to finance the establishment or administration of a general-purpose committee and to solicit political contributions to the committee from its employees, stockholders, or members, as applicable, and their families). Section 253.002 of the Election Code prohibits any person from knowingly making or authorizing a direct campaign expenditure, but also provides several exceptions. *Id.* § 253.002.⁶

Texas campaign finance law does not use the term “independent expenditure,” as used in federal campaign finance law and that was considered in *Citizens United*. However, the term “direct campaign expenditure” is used in Texas law to describe a campaign expenditure that does not constitute a campaign contribution by the person making the expenditure. *Id.* § 251.001(8). In contrast, a campaign expenditure made with the prior consent or approval of the candidate benefitted is not a direct campaign expenditure, but is a contribution to the candidate. 1 T.A.C. § 20.1(5); Ethics Advisory Opinion No. 331 (1996). For example, a person who pays for a billboard supporting a candidate by making a payment directly to the owner of the billboard, without obtaining prior consent or approval from the candidate, would make a direct campaign expenditure. If the candidate gives prior consent or approval to the offer to pay for the billboard,

² The term “corporation” includes corporations that are organized under the Texas Business Corporation Act, the Texas Non-Profit Corporation Act, the Texas For-Profit Corporation Law, the Texas Nonprofit Corporation Law, federal law, or law of another state or nation, and includes other specified associations. *Id.* §§ 253.091, .093.

³ Political contributions include campaign contributions. *Id.* § 251.001(5). A campaign contribution is a transfer of any thing of value to a candidate or political committee that is offered or given with the intent that it be used in connection with a campaign for elective office or on a measure. *Id.* § 251.001(2), (3).

⁴ Political expenditures include campaign expenditures. *Id.* § 251.001(10). A campaign expenditure is a payment, by any person, of money or any other thing of value and includes an agreement made or other obligation incurred, whether legally enforceable or not, to make a payment in connection with a campaign for an elective office or on a measure. *Id.* § 251.001(6), (7).

⁵ No statute in title 15 of the Election Code creates an exception that would permit a corporation or labor organization to make a political contribution to a candidate or officeholder.

⁶ Section 253.002 states:

- (a) A person may not knowingly make or authorize a direct campaign expenditure.
- (b) This section does not apply to:
 - (1) an individual making an expenditure authorized by Subchapter C;
 - (2) a corporation or labor organization making an expenditure authorized by Subchapter D;
 - (3) a candidate making or authorizing an expenditure for the candidate’s own election;
 - (4) a political committee; or
 - (5) a campaign treasurer or assistant campaign treasurer acting in an official capacity.

the person has made (and the candidate has accepted) a campaign contribution to the candidate. See Ethics Advisory Opinion No. 331 (1996). Although there may be differences between the terms “independent expenditure” and “direct campaign expenditure,” as well as between the definitions of those terms in their respective bodies of law, the terms are interchangeable for the limited purpose of determining the effects of *Citizens United* upon title 15 of the Election Code.

Although a federal statute was at issue in *Citizens United*, its holding raises the question of whether it renders unconstitutional the state prohibition on corporations making direct campaign expenditures to support or oppose a candidate for elective office. As we have previously stated, we believe the Texas Legislature intended the laws under our jurisdiction to prohibit political expenditures made by corporations to the full extent allowed by the United States Constitution, as interpreted by the United States Supreme Court. See Ethics Advisory Opinion No. 198 (1994). See also, Gov’t Code § 311.021(1) (providing that, in enacting a statute, it is presumed that compliance with the constitutions of this state and the United States is intended). It is clear that under *Citizens United*, sections 253.094 and 253.002 of the Election Code cannot be enforced to prohibit direct campaign expenditures by corporations or labor organizations. Furthermore, based on *Citizens United*, section 253.002 of the Election Code cannot be enforced to prohibit direct campaign expenditures by any other person. See, e.g., *Citizens United*, 558 U.S. at 39-45 (stating that limits on independent expenditures have a chilling effect on political speech and that restrictions based on anti-distortion or anti-corruption rationales are not justified). See also, *id.* at 26 (noting a previous Court decision that rejected the argument that political speech of corporations or other associations should be treated differently under the First Amendment simply because such associations are not “natural persons”). Thus, for the reasons stated in *Citizens United*, and in accordance with the legislature’s intent that statutes be enforced in compliance with the constitutions of this state and the United States, we cannot enforce sections 253.094 or 253.002 of the Election Code to prohibit a corporation or labor organization from making a direct campaign expenditure or enforce section 253.002 of the Election Code to prohibit any other person from making a direct campaign expenditure.

We note, however, that the Court cited previous rulings that upheld federal statutory prohibitions on “direct contributions to candidates,” but did not render any further opinion regarding the constitutionality of such prohibitions. *Id.* at 29 and 40-1 (citing *Buckley v. Valeo*, 424 U.S. 1 (1976)), 43 (citing *FEC v. National Right to Work Comm.*, 459 U.S. 197 (1982)). In Texas law, title 15 provides no statutory authority for a corporation or labor organization to make a political contribution to a candidate or officeholder. See generally, Subchapter D, Chapter 253, Election Code. The decision of *Citizens United* does not impact the restrictions under our jurisdiction that prohibit a corporation or labor organization from making a political contribution to a candidate or officeholder. Thus, we will continue enforcing the restrictions that prohibit a corporation or labor organization from making a political contribution to a candidate or officeholder.

Political Advertising Disclosure Statements

Chapter 255 of the Election Code also requires certain forms of political advertising to include a disclosure statement. Elec. Code §§ 255.001, .008. The Court in *Citizens United* specifically upheld federal statutory disclaimer provisions that required certain “electioneering communications” to identify the person responsible for the communication and to include additional information in the communication. *Citizens United*, 558 U.S. at 55-6. The Court’s

decision does not impact the political advertising disclosure requirements under chapter 255 of the Election Code. Thus, we will continue enforcing such requirements.

Required Disclosure of Certain Direct Campaign Expenditures

Citizens United also prompts us to consider whether a direct campaign expenditure made to support or oppose a candidate is required by title 15 to be disclosed in a campaign finance report. Section 253.002 of the Election Code has included a general prohibition on direct campaign expenditures since it was most recently adopted by the legislature in 1987.⁷

Under the plain language of title 15, only certain persons are permitted to make direct campaign expenditures. *See supra* note 6. In the case of an individual, corporation, or labor organization, a direct campaign expenditure is permissible only if it is authorized by subchapter C of the Election Code for an individual or subchapter D of the Election Code for a corporation or labor organization. In the case of certain other persons who are not authorized by title 15 to make direct campaign expenditures, such as a partnership or limited liability company, a direct campaign expenditure is prohibited.

Section 253.062, in subchapter C, requires an individual to file a campaign finance report in some circumstances. It states:

Except as otherwise provided by law, an individual not acting in concert with another person may make one or more direct campaign expenditures in an election from the individual's own property that exceed \$100 on any one or more candidates or measures if:

- (1) the individual complies with Chapter 254 as if the individual were a campaign treasurer of a political committee; and
- (2) the individual receives no reimbursement for the expenditures.

Elec. Code § 253.062(a).⁸

Section 253.097, in subchapter D, requires a corporation or labor organization to file a campaign finance report in certain circumstances. It states:

A corporation or labor organization not acting in concert with another person may make one or more direct campaign expenditures from its own property in connection with an election on a measure if the corporation or labor organization makes the expenditures in accordance with Section 253.061 or 253.062 as if the corporation or labor organization were an individual.

Id. § 253.097.

⁷ Acts 1987, 70th Leg., ch. 899, § 1, eff. Sept. 1, 1987. Texas law has imposed various restrictions on campaign contributions and campaign expenditures by corporations and labor organizations since 1903.

⁸ An individual not acting in concert with another person who makes direct campaign expenditures in an election from the individual's own property is not required to file a report under section 253.062 if the total expenditures do not exceed \$100 and the individual receives no reimbursement for the expenditures. *Id.* § 253.061.

Sections 253.062 and 253.097 separately authorize an individual or a corporation or labor organization, respectively, to make certain direct campaign expenditures provided that they file campaign finance reports as necessary to disclose the expenditures. Section 253.062 imposes a filing requirement on an individual making direct expenditures that exceed \$100 on candidates or measures. However, section 253.097 requires a corporation or labor organization to disclose direct campaign expenditures that exceed \$100 on measures and does not address direct campaign expenditures made to support or oppose a candidate.

Title 15 does not explicitly state that a corporation, labor organization, or certain other persons⁹ must file reports to disclose direct campaign expenditures made to support or oppose a candidate. However, it does not necessarily follow from this that the legislature intended that such expenditures be permitted without public disclosure if the prohibition on the expenditures were found unconstitutional in such a case as *Citizens United*. Title 15, including sections 253.002, 253.061, 253.062, and 253.097, was enacted prior to *Citizens United* and had strictly forbidden corporations, labor organizations, and certain other persons from making such expenditures.¹⁰ Thus, title 15 did not specifically require disclosure of such expenditures because it simultaneously prohibited them. *Citizens United* removed our ability to restrict direct campaign expenditures by corporations, labor organizations, and other persons. This result has created a gap or ambiguity in title 15 that prompts us to address whether the absence of statutory language specifically addressing these direct campaign expenditures made to support or oppose candidates reflects the legislature's intent that title 15, in the circumstances following *Citizens United*, require such expenditures to be disclosed.

In interpreting a statute, we must determine the legislature's intent. The legislature's intent is primarily discerned from the plain meaning of the words in the statute¹¹ and, in determining whether or not a statute is considered ambiguous on its face, we may also consider other matters, including the object sought to be attained, circumstances under which the statute was enacted, legislative history, former statutory provisions, administrative construction of the statute, and the consequences of a particular construction.¹² In addition, in enacting a statute, it is presumed that compliance with the constitutions of this state and the United States is intended, a just and reasonable result is intended, a result feasible of execution is intended, and public interest is favored over any private interest.¹³

The Texas Ethics Commission was created by constitutional amendment in 1991.¹⁴ Chapter 571 of the Government Code is the commission's enabling legislation that sets forth the duties, purposes, and authority of the commission. Section 571.001 states:

It is the policy of the legislature to protect the constitutional privilege of free suffrage by regulating elections and prohibiting undue influence while also

⁹ Persons such as candidates, officeholders, individuals, and campaign treasurers of a political committee are required to file reports in accordance with chapter 254 of the Election Code. However, title 15 does not address the filing obligations of other persons.

¹⁰ An unlawful political expenditure by a corporation or labor organization is a third degree felony offense. Elec. Code § 253.094.

¹¹ *State v. Shumake*, 199 S.W.3d 279, 284 (Tex. 2006).

¹² Gov't Code § 311.023.

¹³ *Id.* § 311.021.

¹⁴ Tex. Const. art. III, § 24a.

protecting the constitutional right of the governed to apply to their government for the redress of grievances. This chapter is intended to achieve those purposes *and shall be construed to achieve the following objectives:*

- (3) to disclose fully information related to expenditures and contributions for elections and for petitioning the government; . . . and
- (5) to ensure the public's confidence and trust in its government.

Gov't Code § 571.001 (emphasis added). Chapter 571 also authorized the commission to issue advisory opinions and rules to carry out its duties.¹⁵

Requiring the disclosure of direct campaign expenditures by corporations, labor organizations, and other persons would favor the public interest by providing information to the public regarding efforts to influence elections through spending and would follow the directives set forth in the commission's enabling legislation. In addition, requiring disclosure is feasible of execution because the Ethics Commission is already available to provide forms and receive reports that would be filed for that purpose. Furthermore, requiring disclosure for corporations, labor organizations, and other persons would be consistent with *Citizens United*, which placed corporations, individuals, and other persons on equal footing for purposes of the constitutional right to make direct campaign expenditures.

Considering title 15 of the Election Code, the impact of *Citizens United*, and the additional factors stated previously, our opinion is that the legislature intended title 15 to require a corporation, labor organization, or other person that makes one or more direct campaign expenditures from its own property in connection with an election of a candidate to comply with section 253.062 as if it were an individual. Therefore, a corporation, labor organization, or other person that makes such expenditures must comply with the disclosure requirements that apply to an individual under section 253.062.¹⁶ This opinion is consistent with the policy goals set forth in our enabling legislation.

SUMMARY

For the reasons stated in this opinion, the Texas Ethics Commission cannot enforce sections 253.094 or 253.002 of the Election Code to prohibit a corporation or labor organization from making a direct campaign expenditure. In addition, the Texas Ethics Commission cannot enforce section 253.002 of the Election Code to prohibit a person from making a direct campaign expenditure. *Citizens United* does not, however, impede us from continuing to enforce the restrictions on corporations or labor organizations making political contributions to candidates or officeholders. Furthermore, *Citizens United* does not impede us from continuing to enforce the political advertising disclosure requirements under chapter 255 of the Election Code. In addition, title 15 requires a corporation, labor organization, or other person that makes one or more direct campaign expenditures from its own property in connection with an election of a candidate to comply with the reporting requirements that apply to an individual as set out in section 253.062 of the Election Code.

¹⁵ See Gov't Code §§ 571.061, .091.

¹⁶ Section 253.062 requires compliance with chapter 254 of the Election Code, which includes recordkeeping, notice, and other disclosure requirements. See generally, chapter 254, Elec. Code.

EXHIBIT C

TEXAS ETHICS COMMISSION RULES

Chapter 22. RESTRICTIONS ON CONTRIBUTIONS AND EXPENDITURES

§ 22.6. Reporting Direct Campaign Expenditures

(a) A person making a direct campaign expenditure that exceeds \$100:

(1) shall comply with Chapter 253, Subchapter C of Title 15 of the Election Code as if the person were an individual; and

(2) is not required to file a campaign treasurer appointment as a political committee, but is required to use the reporting forms and schedule prescribed by Chapter 254 of Title 15 of the Election Code as if the person were a campaign treasurer of a general-purpose committee that does not file under the monthly reporting schedule option in Section 254.155 of the Election Code.

(b) Except as provided by subsection (c) of this section, a person is not required to file a report as required by this section if:

(1) the person is required to disclose the expenditure in another report required by Title 15 of the Election Code; and

(2) the report is required to be filed within the time prescribed for a direct campaign expenditure required to be filed under this section.

(c) A general-purpose committee that files under the monthly reporting schedule option in section 254.155 of the Election Code is not subject to the requirements to file 30-day and 8-day pre-election reports but is subject to the requirements to file special pre-election reports.

(d) A person making a direct campaign expenditure consisting of the person's personal travel expenses is not required to disclose the expenditures under this section, provided that the person receives no reimbursement for the expenditures.

(e) A political committee is subject to the restrictions in Title 15 of the Election Code.

EXHIBIT D

Possible Amendments to Section 254.042(b) of the Election Code

Suggested new language is underlined and suggested language to repeal is indicated by [strikethrough].

§ 254.042. Civil Penalty for Late Report

(a) The commission shall determine from any available evidence whether a report required to be filed with the commission under this chapter is late. On making that determination, the commission shall immediately mail a notice of the determination to the person required to file the report.

(b) If a report other than a report under Section 254.064(c), 254.064(e), 254.124(c), 254.124(e), [~~254.154(c)~~, or 254.154(e)] or the first report under Section 254.063 or 254.123 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500. If a report under Section 254.064(c), 254.064(e), 254.124(c), 254.124(e), [~~254.154(c)~~, or 254.154(e)] or the first report under Section 254.063 or 254.153 that is required to be filed following the primary or general election is determined to be late, the person required to file the report is liable to the state for a civil penalty of \$500 for the first day the report is late and \$100 for each day thereafter that the report is late. If a report is more than 30 days late, the commission shall issue a warning of liability by registered mail to the person required to file the report. If the penalty is not paid before the 10th day after the date on which the warning is received, the person is liable for a civil penalty in an amount determined by commission rule, but not to exceed \$10,000.

(c) A penalty paid voluntarily under this section shall be deposited in the State Treasury to the credit of the General Revenue Fund.

EXHIBIT E

Possible Amendments to Section 571.0771(b) of the Government Code

Suggested new language is underlined and suggested language to repeal is indicated by [~~strikethrough~~].

§ 571.0771. Corrected Statements, Registrations, and Reports Considered Timely Filed

(a) A statement, registration, or report required that is filed with the commission is not considered to be late for purposes of any applicable civil penalty for late filing of the statement, registration, or report if:

(1) any error or omission in the statement, registration, or report as originally filed was made in good faith; and

(2) not later than the 14th business day after the date the person filing the statement, registration, or report learns that the statement, registration, or report as originally filed is inaccurate or incomplete, the person files:

(A) a corrected or amended statement, registration, or report; and

(B) an affidavit stating that the error or omission in the original statement, registration, or report was made in good faith.

(b) Subsection (a) does not apply to:

(1) a penalty imposed under Section 571.069 or Subchapter E or F; or

(2) a report required to be filed under Section 254.038, 254.039, 254.064(c), 254.064(e), 254.124(c), 254.124(e), [~~or~~] 254.154(c), or 254.154(e), Election Code.

(c) A report required to be filed under Section 254.064(c), 254.064(e), 254.124(c), 254.124(e), [~~or~~] 254.154(c), or 254.154(e), Election Code, is not considered to be late for purposes of any applicable civil penalty for late filing of the report if:

(1) the report as originally filed substantially complies with the applicable law, as determined by the commission;

(2) any error or omission in the report as originally filed was made in good faith; and

(3) not later than the 14th business day after the date the person filing the report learns that the report as originally filed is inaccurate or incomplete, the person files:

(A) a corrected or amended report; and

(B) an affidavit stating that the error or omission in the original report was made in good faith.

EXHIBIT F

Possible Amendment to Section 253.032 of the Election Code

Suggested new language is indicated by underlined text.

§ 253.032. Limitation on Contribution by Out-of-State Committee

(a) In a reporting period, a candidate, officeholder, or political committee may not knowingly accept political contributions totaling more than \$500 from an out-of-state political committee unless, before accepting a contribution that would cause the total to exceed \$500, the candidate, officeholder, or political committee, as applicable, receives from the out-of-state committee:

(1) a written statement, certified by an officer of the out-of-state committee, listing the full name and address of each person who contributed more than \$100 to the out-of-state committee during the 12 months immediately preceding the date of the contribution; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(b) This section does not apply to a contribution from an out-of-state political committee if the committee appointed a campaign treasurer under Chapter 252 before the contribution was made and is subject to the reporting requirements of Chapter 254.

(c) A person who violates Subsection (a) commits an offense. An offense under this section is a Class A misdemeanor.

(d) Except as provided by Subsection (f), a [A] candidate, officeholder, or political committee shall include the statement or copy required by Subsection (a) as a part of the report filed under Chapter 254 that covers the reporting period to which Subsection (a) applies.

(e) Except as provided by Subsection (f), a [A] candidate, officeholder, or political committee that accepts political contributions totaling \$500 or less from an out-of-state political committee shall include as part of the report filed under Chapter 254 that covers the reporting period in which the contribution is accepted;

(1) the same information for the out-of-state political committee required for general-purpose committees by Sections 252.002 and 252.003; or

(2) a copy of the out-of-state committee's statement of organization filed as required by law with the Federal Election Commission and certified by an officer of the out-of-state committee.

(f) A candidate, officeholder, or political committee that accepts political contributions from an out-of-state political committee required to file its statement of organization with the Federal Election Commission, may comply with subsection (d) and subsection (e)(2) of this section by entering the out-of-state committee's federal PAC identification number in the appropriate place on the report.

EXHIBIT G

Possible Amendment to Section 571.032 of the Government Code

Suggested new language is underlined and suggested language to repeal is indicated by [~~strikethrough~~].

§ 571.032. Mailing of Notices, Decisions, and Reports

~~[(a) Except as provided by Subsections (b) each written notice, decision, and report required to be sent under this chapter shall be sent by registered or certified mail, restricted delivery, return receipt requested.]~~

(a) ~~[(b)]~~ After written notice under Section 571.123(b) regarding the filing of a sworn complaint has been sent to a respondent by registered or certified mail, restricted delivery, return receipt requested ~~[person]~~ ~~[in the manner required by Subsection (a)]~~, the commission may send to the respondent ~~[person]~~ any additional notices, decisions, and reports regarding the complaint by regular mail ~~[unless the person has notified the commission to send all notices regarding the complaint by registered or certified mail, restricted delivery, return receipt requested].~~

(b) Any notice regarding the status of a complaint required to be sent quarterly under Section 571.1351(c) may be sent by electronic mail.

(c) Any written notice, decision, or report required to be sent under this chapter to a complainant may be sent by electronic mail or regular mail.