

TEXAS ETHICS COMMISSION

IN THE MATTER OF
WILLIAM W. ZEDLER,
RESPONDENT

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BEFORE THE
TEXAS ETHICS COMMISSION
SC-2810351

ORDER and AGREED RESOLUTION

I. Recitals

The Texas Ethics Commission (the commission) met on December 2, 2009, to consider sworn complaint SC-2810351. A quorum of the commission was present. The commission determined that there is credible evidence of violations of sections 255.001 and 255.004 of the Election Code, laws administered and enforced by the commission. To resolve and settle this complaint without further proceedings, the commission proposed this resolution to the respondent.

II. Allegations

The complaint alleged that the respondent failed to include a disclosure statement on political advertising and represented in campaign communications that the communications emanated from a source other than their true source.

III. Facts Supported by Credible Evidence

Credible evidence available to the commission supports the following findings of fact:

1. The respondent was an unsuccessful incumbent candidate for state representative for District 96 in the November 2008 general election.
2. The complaint included copies of mailers that supported the respondent as a candidate for state representative. The mailers included a disclosure statement that stated, "Pol. Adv. paid for by Friends of Bill Zedler," and also provided a mailing address.
3. The complaint also included the Internet address for the respondent's campaign website, which supported the respondent as a candidate for state representative. The respondent's Internet website included a disclosure statement that stated, "Pol. Adv. Paid for by Friends of

Bill Zedler.” As of December 2, 2009, the respondent’s Internet website still contained that disclosure statement.

4. In response to the sworn complaint allegations, the respondent submitted a response in which he admitted that he caused to be published, distributed, or broadcast political advertising containing express advocacy for his election to the House of Representatives. The respondent also admitted that he paid for the political advertising with funds from his campaign/officeholder account.
5. The respondent argued that the disclosure statement did not violate section 255.001 of the Election Code because it identified that it was political advertising and “[gave] the public notice that Bill Zedler and his campaign paid for and authorized the advertisement.” The respondent claimed that, “[t]he additional verbiage ‘Friends’ of’ [did] not substantially change the nature of the disclosure nor obscure the true source of the advertising,” and that “Friends of Bill Zedler” clearly identified the respondent’s campaign.
6. Citing *McIntyre v. Ohio Elections Commission*, 514 U.S. 334 (1995), the respondent also argued that, as applied to the respondent, sections 255.001 and 255.004 of the Election Code violate the United States Constitution and Texas Constitution as an impermissible limitation on anonymous political speech.

IV. Findings and Conclusions of Law

The facts described in Section III support the following findings and conclusions of law:

1. A person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising, and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. ELEC. CODE § 255.001(a). Political advertising that is authorized by a candidate, an agent of a candidate, or a political committee filing reports under this title shall be deemed to contain express advocacy. *Id.* § 255.001(b).
2. A person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. *Id.* § 255.004(b).
3. Political advertising means, in pertinent part, a communication supporting or opposing a candidate for election to a public office that appears in a pamphlet, circular, flier, billboard or

- other sign, bumper sticker, or similar form of written communication, or on an Internet website. *Id.* § 251.001(16).
4. 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. *Id.* § 251.001(17).
 5. The communications at issue supported the respondent for election to a public office and appeared in a pamphlet, circular, flier, or similar form of written communication, and on an Internet website. Therefore, the communications were political advertising. The respondent paid for and authorized the political advertising. Therefore, the communications were deemed to contain express advocacy. The communications were also written communications that related to a campaign for public office. Therefore, the communications were also campaign communications. The disclosure statements that appeared on the respondent's political advertising indicated that the communications were political advertising, but failed to identify the respondent as the person who paid for the political advertising. Instead the disclosure statements disclosed that "Friends of Bill Zedler" paid for the political advertising, which implicitly suggested that the communications emanated from persons other than the respondent. Thus, the communications purported to emanate from a source other than their true source.
 6. In *McIntyre v. Ohio Elections Commission*, the United States Supreme Court held that an Ohio statute prohibiting anonymous political literature violated the *First Amendment to the United States Constitution*. See *McIntyre*, 514 U.S. at 336, 357. Unlike *McIntyre*, which involved a private individual who created and distributed leaflets opposing a proposed school tax levy, *id.* at 337, the sworn complaint at issue involved political advertising supporting a candidate for public office which purported to emanate from a source other than its true source.
 7. Although not cited by the respondent, in *Doe v. State*, the Texas Court of Criminal Appeals, citing *McIntyre*, held that a previous version of section 255.001 of the Election Code¹ violated the *First Amendment to the United States Constitution*. See *Doe v. State*, 112 S.W.3d 532 (Tex. Crim. App. 2003). *Doe* involved a private individual who anonymously created and distributed a flyer opposing a candidate for public office. *Id.* at 534. The court noted in its opinion that section 255.004 of the Election Code already addressed the state's interest in ensuring that political advertising is attributed to its originating and actual source. *Id.* at 536. Unlike *Doe*, which addressed anonymous political advertising, the sworn complaint at issue involved political advertising that contained a disclosure statement, but which attributed the political advertising to a source other than its true source.

¹ Section 255.001 of the Election Code was amended in 2003.

8. The political advertising at issue failed to include a proper disclosure statement and purported to emanate from a source other than its true source. Therefore, there is credible evidence of violations of sections 255.001 and 255.004 of the Election Code.

V. Representations and Agreement by Respondent

By signing this order and agreed resolution and returning it to the commission:

1. The respondent neither admits nor denies the facts described under Section III or the commission's findings and conclusions of law described under Section IV, and consents to the entry of this order and agreed resolution solely for the purpose of resolving this sworn complaint.
2. The respondent consents to this order and agreed resolution and waives any right to further proceedings in this matter.
3. The respondent acknowledges that a person may not knowingly cause to be published, distributed, or broadcast political advertising containing express advocacy that does not indicate in the advertising that it is political advertising and the full name of the person who paid for the political advertising, the political committee authorizing the political advertising, or the candidate or specific-purpose committee supporting the candidate, if the political advertising is authorized by the candidate. The respondent also acknowledges that a person commits an offense if, with intent to injure a candidate or influence the result of an election, the person knowingly represents in a campaign communication that the communication emanates from a source other than its true source. The respondent agrees to comply with these requirements of the law.

VI. Confidentiality

This order and agreed resolution describes violations that the commission has determined are neither technical nor *de minimis*. Accordingly, this order and agreed resolution is not confidential under section 571.140 of the Government Code and may be disclosed by members and staff of the commission.

VII. Sanction

After considering the seriousness of the violations described under Sections III and IV, including the nature, circumstances, and consequences of the violations, and after considering the sanction necessary to deter future violations, the commission imposes a \$100 civil penalty.

VIII. Order

The commission hereby orders that if the respondent consents to the proposed resolution, this order and agreed resolution is a final and complete resolution of SC-2810351.

AGREED to by the respondent on this _____ day of _____, 20____.

William W. Zedler, Respondent

EXECUTED ORIGINAL received by the commission on: _____.

Texas Ethics Commission

By: _____
David A. Reisman, Executive Director